

MESCALERO APACHE TRIBAL CODE



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CHAPTER 1

ELECTION CODE

SECTION 1. GENERAL.

1-1-1. NAME. This Chapter shall be known as the Election Code of the Mescalero Apache Tribe.

1-1-2. PURPOSE. The purpose of this Election Code is to provide regulations that will result in fair and efficient elections.

1-1-3. SCOPE. The provisions of this Election Code shall apply to both regular and special elections for the following:

- A. President;
- B. Vice President;
- C. Members of the Tribal Council;
- D. Mescalero Apache School Board members; or
- E. Any proposition, including:
 - 1. Constitutional amendments;
 - 2. Referenda;
 - 3. Recall of elected Tribal officials; or
 - 4. Other questions submitted to the members of the Tribe for a vote.

1-1-4. DEFINITIONS.

- A. "Felony," as used in Article VI § 1 of the Revised Constitution, means any offense that is defined by the jurisdiction wherein the offense occurred as a "felony;"
- B. "Serious Offenses" as used in Article VI § 1 of the Revised Constitution includes:
 - 1. Those crimes specifically enumerated in Article VI § 1; and
 - 2. Any other offense involving:
 - a. A disregard of the interests of the Tribe as a whole;
 - b. Misconduct or gross neglect of duty;
 - c. Moral turpitude;
 - d. Public intoxication; or
 - e. Driving while intoxicated (DWI).
 - 3. But, only if:
 - a. An actual conviction has been entered by a court of competent jurisdiction;
 - b. Where an individual has been convicted of "habitual drunkenness", the Board has determined that sufficient evidence exists that the condition persists; and
 - c. Seven (7) years have NOT lapsed since the conviction.
- C. "Resided" as that term is used in the Revised Constitution at Article VIII § 3 and Article IX § 2(b) shall refer to the act of remaining physically present at a single, fixed place for the past six (6) months with an intent of making that place the individual's home, with only brief absences.

- D. "Policy making position" as used in Article VIII § 4 of the Revised Constitution shall refer to
 - 1. The head of a Tribal program or department;
 - 2. The general manager of a tribal enterprise; or
 - 3. A similar position in an entity doing a significant amount of business on the Mescalero Apache Reservation.
- E. "Administrative assistant to the Tribal Council" shall mean "tribal secretary" as used in Article IX § 6 and § 9 of the Revised Constitution and "Secretary of the Tribal Council" as used in Article IX § 8 of the Revised Constitution, and shall refer to the paid, recording administrative assistant to the Tribal Council.
- F. "Days" as used in the Revised Constitution and in this Code shall refer to calendar days unless otherwise specified. The term "business day" shall refer to any day during which the Mescalero Apache Tribal administrative offices are open for regular business.

1-1-5. VOTING PLACES. There shall be one voting place which shall be located at the Tribal Administrative Offices in a room to be designated by the Election Board for that purpose.

SECTION 2. ELECTION BOARD.

1-2-1. COMPOSITION. The Mescalero Apache Tribal Election Board (hereinafter "the Election Board") shall consist of ten (10) regular members and two (2) alternate members.

1-2-2. APPOINTMENT OF MEMBERS.

- A. All regular and alternate members of the Election Board shall be appointed as provided in Article IX § 1 of the Revised Constitution on or before ninety (90) days prior to the first scheduled election of the year.
- B. Any person so appointed may decline the appointment, in which case, another appointment shall be made in a manner not inconsistent with paragraph (A) of this section.

1-2-3. APPOINTMENT OF CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY OF THE ELECTION BOARD.

- A. The President of the Mescalero Apache Tribe, with the concurrence of a majority of the Tribal Council, shall appoint the Chairperson of the Election Board.
- B. The appointed members of the Election Board shall elect, by majority vote of those members present and a quorum being present, the Vice-Chairperson, and the Secretary of the Election Board.
- C. The Chairperson shall:
 - 1. Preside over all meetings or hearings of the Election Board;
 - 2. Call meetings or hearings required by this Code and any other meetings which he or she finds necessary, with appropriate notice;
 - 3. Set the agenda of Board meetings;
 - 4. Establish any rules deemed necessary for the conduct of Board meetings;
 - 5. Have the right to vote on all matters before the Board; and
 - 6. Have the power to delegate duties as necessary to provide for a fair and efficient election process.
- D. The Vice-Chairperson shall:

1. Serve as Chairperson in the absence of the Chairperson;
2. Have the right to vote on all matters before the Election Board; and
3. Perform any duties delegated to him or her by the Chairperson.

E. The Secretary shall:

1. Keep the minutes of all Election Board meetings;
2. Ensure that all forms required are available through the Election Forms Box and that all filings placed in the Election Board Mailbox are transferred to the Board as a whole for review;
3. Keep records of:
 - a. Any Board rulings, decisions, and findings;
 - b. All filings;
 - c. The voter registry; and
 - d. Other documents related to the election;
4. At the end of the Board's term, provide for the safe-keeping or transfer of all Election Board records to the successor Election Board;
5. Serve as Chairperson in the absence of the Chairperson and Vice-Chairperson;
6. Have the right to vote on all matters before the Board; and
7. Perform any duties delegated to him or her by the Chairperson.

1-2-4. DESIGNATION OF JUDGES, CLERKS, AND INTERPRETERS.

A. Two (2) members of the Election Board appointed by the President, shall be designated by the President, with the consent of the Tribal Council, as Judges. Judges shall:

1. Observe voting and other election proceedings;
2. Make decisions in the case of minor procedural disputes needing immediate resolution on the day of the election; and
3. Otherwise ensure the security and integrity of the ballots cast.

B. Three (3) members of the Election Board appointed by the President, shall be designated by the President, with the consent of the Tribal Council, as Clerks. Clerks shall:

1. Ensure, by comparing voter identification to the roster of registered eligible voters prepared by the Board, that only eligible voters are allowed to cast ballots;
2. Keep a record of:
 - a. The number of ballots cast;
 - b. The names of voters who cast ballots;
 - c. Any election related disputes and their resolution (if any);
 - d. Problems with voting machines;
 - e. Frequently asked questions; and
 - f. Other significant occurrences on Election Day.

C. Three (3) members of the Election Board appointed by the President, shall be designated by the

President, with the consent of the Tribal Council, as Interpreters. Interpreters shall provide assistance to voters, upon request for such assistance, on the day of the election by explaining how:

1. To mark ballots;
2. Insert ballots into the voting machine; and
3. The voting process in general, in English or Apache, as requested. Interpreters shall be able to speak Apache fluently.

1-2-5. QUALIFICATIONS AND ETHICAL STANDARDS.

- A. Members of the Election Board shall be enrolled members of the Mescalero Apache Tribe, over eighteen (18) years of age and of good moral character. Those individuals designated as Interpreter in their appointments shall also be fluent in Apache.
- B. In the event that any person appointed to the Election Board files as a candidate for an office during his or her tenure on the Election Board, he or she shall immediately withdraw from the Board.
- C. Election Board members shall uphold the integrity and independence of the Board as well as the election process in the performance of the Board's duties. Specifically:
 1. Election Board members shall not:
 - a. Actively or publicly participate in the campaign of any person for Tribal elective office;
 - b. Become involved in any Tribal political activities or actions which could be interpreted in the Tribal community as supporting a particular political position;
 - c. Announce his or her views on disputed legal or political issues related to Tribal elections or candidates for elected office;
 - d. Accept a gift, favor or loan from any person who is a candidate for Tribal elective office;
 - e. Solicit funds or contribute to a Tribal political organization, candidate or political event; and
 - f. Make any public comment regarding election rules and procedures unless authorized by the Board.
 2. Each Election Board member shall, in the case of a conflict of interest, such as close familial or other relationship with individuals involved in a dispute or other occurrence requiring a Board decision:
 - a. Give notice of the existence of such conflict; and
 - b. Recuse himself or herself from such decision.

The Election Board Chairperson shall appoint an alternate Board member to take the affected Board member's place in any discussion and vote.

3. Election Board members shall use the utmost discretion in dealing with confidential information pertaining to candidates.
4. Each Election Board member shall treat all other Board members with civility and perform those duties delegated to him or her to the best of his or her ability.
5. Each Election Board member shall be required to sign a statement under oath that he or

she shall comply with the Revised Constitution and the Election Code.

1-2-6. TERMS OF OFFICE. Following their appointment, the members of the Election Board will remain in office until a subsequent Election Board is appointed in accordance with Article IX § 1 of the Revised Constitution.

1-2-7. GENERAL DUTIES. In addition to duties specified elsewhere, the Election Board shall:

- A. Issue such notices as are necessary within the deadlines set herein or, where no deadline is noted, within a reasonable time to inform Tribal members of the dates, times, places, and procedures for nominations and elections.
- B. Post all notices in the manner required by the Election Code and/or the Revised Constitution. In the event that the manner of notice is not specified elsewhere, then notice shall be given in a manner reasonably calculated to give adequate notice to the individual or individuals involved under the circumstances.
- C. Establish, at the first meeting of the Election Board, a schedule of meetings, training, filing deadlines, the date of the election, and any other major election events, substantially similar to that appearing in the Appendix to this Code. This schedule may be revised from time to time as the need arises, provided that all dates meet the requirements of this Code and the Revised Constitution.
- D. Strive to meet all deadlines in order to ensure an efficient and fair election process.
- E. Strive to ensure that Tribal elections are conducted in compliance with this Code and the Revised Constitution.

1-2-8. TRAINING OF THE ELECTION BOARD. The Election Board shall attend election training as soon as possible after appointment. Such training shall include:

- A. A non-technical but thorough explanation of the duties of the Board and the election process as prescribed by the Constitution and this Code; and
- B. Presentation of an Election Board Handbook containing:
 - 1. Updated copies of the Revised Constitution and this Election Code;
 - 2. Standard guidelines for the operations and processes of elections, including preelection-day activities, election-day activities and post-election-day activities;
 - 3. Any documents recording past election problems and their solutions promulgated by past Boards;
 - 4. All forms and samples promulgated pursuant to this Code; and
 - 5. Any other materials which may assist the Board in carrying out its duties.

1-2-9. ELECTION BOARD MEETINGS.

- A. All Election Board members must attend all Board meetings as may be regularly scheduled or called by the Board Chairperson, except by reason of:
 - 1. Illness;
 - 2. Disability; or
 - 3. Other incapacitation.
- B. Absence from two (2) meetings without documentation of illness, disability, or other incapacitation shall constitute cause for removal in accordance with Section 1-2-11 of this Code.

- C. No formal Board action may be taken except upon majority vote, a quorum being present. A quorum shall consist of at least six (6) Board members. Alternates may be included in order to create a quorum.

1-2-10. VACANCIES.

- A. If the total number of Election Board members, including alternates, falls below ten (10) members, the President of the Tribe shall appoint a replacement member or members. Such appointments shall be subject to confirmation by the Mescalero Apache Tribal Council.
- B. Any person so appointed shall serve for the duration of the term of his or her predecessor.

1-2-11. REMOVAL. Any member of the Election Board may be removed by a tribunal according to the provisions of this section.

- A. The tribunal shall be composed of:
 - 1. The President;
 - 2. A member of the Tribal Council selected by the Tribal Council; and
 - 3. The Election Board Chairman, unless the person subject to removal is the Election Board Chairman, in which case the President shall appoint another member of the Board to sit on the tribunal.
- B. Removal by the tribunal shall occur only upon a recommendation of removal by:
 - 1. A majority of the Election Board;
 - 2. A majority of the Tribal Council, as evidenced by resolution of the Council; or
 - 3. The Tribal President, of his or her own initiative.
- C. Removal shall occur for good cause only.
- D. A hearing for removal shall be conducted by the tribunal only after providing timely notice to the affected member of:
 - 1. Intent to remove;
 - 2. The reason(s) for such action; and
 - 3. An opportunity for the person subject to removal to answer the charges against him or her.

1-2-12. REMOVAL OF THE ENTIRE BOARD. The Tribal President, with the consent of the Tribal Council, shall have the authority to remove the entire Election Board, if the Board as a whole has been guilty of:

- A. Gross neglect of duty;
- B. Failing to substantially perform those duties prescribed by this Code and/or the Revised Constitution; and/or
- C. Seriously damaging the legitimacy of the election process and, as a result, Tribal government as a whole.

Appointment of a new Board shall be made pursuant to §1-2-2 of this Code immediately.

1-2-13. ALTERNATES.

- A. Alternate members of the Election Board shall serve in case of an appointed member's
 - 1. Absence;

2. Physical incapability;
 3. Recusal in the case of a conflict of interest; or
 4. Disqualification under the Revised Constitution or this Code.
- B. Alternates shall attend all meetings and training of the Board.
- C. Alternates shall NOT be allowed to vote or comment on any matter before the Board except where a regular member is unable to participate for the reasons listed above.

1-2-14. COMPENSATION.

- A. The Election Board, including alternates, shall be compensated with a single amount, to be determined annually by the Tribal Council provided that the aggregate is reasonable and fair.
- B. In the case of an election for Tribal President, Vice President or Council member:
1. One half (1/2) of the amount determined shall be paid one month prior to the Primary; and
 2. The last half (1/2) of the amount shall be paid two (2) weeks after the General Election.
- C. In the case of a referendum or other special election:
2. Half the amount shall be paid two (2) weeks prior to the election; and
 3. The last half of such amount shall be paid two (2) weeks after the election.
- D. The Board may request additional compensation if special circumstances arise. Any additional compensation shall be subject to the approval of the Mescalero Apache Tribal Council.
- E. Election Board members who are employees of the Mescalero Apache Tribe or one of its sub-entities or enterprises shall utilize either unpaid administrative leave, which shall be granted, or paid vacation time which shall be charged against the member's accrued leave.

1-2-15. RULE-MAKING AUTHORITY.

- A. The Election Board shall have the authority to promulgate and enforce such rules as it deems necessary in order to provide for fair and efficient elections by a majority vote of the entire Election Board.
- B. Such rules shall not be inconsistent with the Revised Constitution of the Mescalero Apache Tribe and this Code and shall be submitted to the Tribal Council prior to implementation. The Tribal Council shall have the authority, by majority vote, to amend or rescind any rules promulgated under this section.
- C. Unless and until amended or rescinded by the Tribal Council, any rule promulgated pursuant to this Section shall have the force and effect of law for the duration of the term of the Board promulgating such rule.
- D. The Board shall post any rule promulgated immediately.
- E. At the end of the Board's term, the Board may recommend that rules promulgated during the Board's term be considered as possible revision or supplementation to this Code to the Tribal Council.

1-2-16. ADMINISTRATIVE ASSISTANT TO THE TRIBAL COUNCIL & DESIGNEE.

- A. The administrative assistant to the Tribal Council is not a member of the Election Board and shall perform only those duties specifically listed herein and in the Revised Constitution at Article IX § 8. All other election-related notices or actions required herein shall be performed by the Election

Board.

- B. Where the administrative assistant to the Tribal Council is absent, the Tribal Census Clerk shall act as the administrative assistant to the Tribal Council's designee and shall perform those duties listed herein and in the Revised Constitution.

SECTION 3. PRE-ELECTION/CANDIDATES.

1-3-1. ELECTION DATES.

- A. Election dates shall be established by the Tribal Council by resolution in a manner consistent with Article IX § 8 of the Revised Constitution.
- B. Mescalero Apache School Board election dates shall be as established in a separate resolution of the Tribal Council. There shall be no primary election for the School Board.
- C. Where an election date would otherwise fall on a Saturday, Sunday, or Tribal holiday, then the date shall be deemed as falling on the immediately preceding business day.

1-3-2. DECLARATION OF CANDIDACY. Any qualified member of the Mescalero Apache Tribe who desires that his or her name be placed on the ballot as a candidate for the office of president, vice president, or council member in the primary election shall file a Statement of Intent.

- A. Each Statement of Intent shall be on a form approved by the Election Board and substantially similar to that appearing in the Appendix to this Code and include:
 - 1. The candidate's name;
 - 2. The office for which he or her desires to become a candidate;
 - 3. His or her Tribal census number;
 - 4. His or her permanent address;
 - 5. A statement indicating whether he or she has ever been convicted of a felony as defined at §1-1-4(A) or offense which may be classified as a "serious offense" as defined at §1-1-4(B) and description of all convictions;
 - 6. A statement that he or she:
 - a. Has read the pertinent sections of the Code and Revised Constitution (provided to the candidate by the Board with the Statement of Intent form); and
 - b. Shall abide by the same;
 - 7. A statement that he or she meets the requirements for candidacy in the Code and the Revised Constitution;
 - 8. A statement that he or she swears that all information contained therein is true as far as he or she is aware;
 - 9. A statement that he or she has signed the form with knowledge that his or her signature was under penalty of perjury; and
 - 10. The signature of the individual wishing to become a candidate.
- B. Each Statement of Intent shall be filed on a proper form and shall be returned to the administrative assistant to the Tribal Council during the time period specified in the election resolution, which period shall include at least thirty (30) days and include dates that are no earlier than forty-five (45) days and no less than thirty (30) days prior to the Primary Election or the Mescalero Apache School Board election. The administrative assistant to the Tribal Council shall transfer each Statement of Intent received by him or her by the end of the business day.

1-3-3. EXTENSION OF DEADLINE FOR DECLARATION OF CANDIDACY.

- A. If there are no candidates for an elective office, the deadline for filing Statements of Intent as prescribed in § 1-3-2 shall be extended for one (1) week.
- B. If after the one-week extension, there are no candidates for an elective office, the deadline shall again be extended by one week increments until a Statement of Intent has been filed.
- C. The date of the election shall remain the same as set by the Board and prescribed by the Revised Constitution and this Code.
- D. If there are no candidates for an elective office forty-eight (48) hours before the election the Board shall complete preparation of the ballots, and the election shall be held.
- E. The office for which there were no candidates shall be filled by appointment by the President with the approval of the Tribal Council.

1-3-4. WITHDRAWAL FROM CANDIDACY. No candidate shall be allowed to withdraw except by filing written notice with the administrative assistant to the Tribal Council at least twelve (12) days before the election pursuant to Article IX § 9 of the Revised Constitution. The administrative assistant to the Tribal Council shall transfer each such notice to the Election Board by the end of the business day.

1-3-5. BACKGROUND CHECKS. The Election Board shall cause background checks to be conducted on each candidate to determine eligibility. Each candidate shall be required to sign a written consent to a background check. Potential candidates will be strongly cautioned that any ineligible individual attempting to hold an office for which they are disqualified under the Revised Constitution of the Mescalero Apache Tribe is subject to the criminal penalties of §1-7-1.

1-3-6. CANDIDATE ELIGIBILITY & CONFLICTS OF INTEREST.

- A. The Election Board shall notify any candidates it has determined as holding a position or interest which is in conflict, as described in Article VIII § 4 of the Revised Constitution, with the candidate serving in elective office if his or her candidacy is successful that resignation from such position or interest must occur prior to Inauguration Day of the term to be served.
- B. All candidates shall be required to sign an affidavit testifying that they shall resign from their position or dispose of any interest which creates a conflict of interest if such conflict is found to exist by the Election Board.
- C. This Section shall not be interpreted as requiring an individual to resign or otherwise act to terminate a conflict in order to become a candidate.
- D. Eligibility for candidacy for membership on the Mescalero Apache School Board shall be governed by Chapter 26.

1-3-7. PARDONS BY THE TRIBAL PRESIDENT. Any candidate claiming that he or she has been pardoned by the Tribal President and that therefore, that he or she is eligible for candidacy must attach a copy of the pardon to the Statement of Intent. Furthermore, the Election Board may request that the candidate present an original for inspection by the Election Board.

1-3-8. CERTIFICATION OF CANDIDATES & LIST OF ELIGIBLE VOTERS.

- A. The Election Board shall, at least twenty (20) days before the election:
 - 1. Review all filings received;
 - 2. Certify as eligible any and all candidates which have qualified to run for election;
 - 3. Contact all unqualified candidates and state the reason for their not being qualified; such notice of ineligibility shall substantially take the form of that in the Appendix to this

Code; and

4. If a candidate is not qualified due to clerical error on a filing with the Election Board, afford the candidate an opportunity to correct such error in his or her filing so long as a new filing is received by the Election Board not later than forty-eight (48) hours after notification to the candidate in person or not later than five (5) business days after notification by United States mail, first class postage prepaid; and
 5. Provide to the administrative assistant to the Tribal Council the names of eligible candidates filing timely, properly completed Statement of Intent. The administrative assistant to the Tribal Council shall then post those names in accordance with Article IX § 9 of the Revised Constitution.
- B. The Election Board shall prepare a list of eligible voters who meet the requirements of Article IX, Sections 2 and 5 of the Revised Constitution and post the list at least ten (10) days before the election in at least two (2) public places, one of which shall be the Administration Building.

SECTION 4. ELECTION.

1-4-1. ABSENTEE VOTING. No member of the Mescalero Apache Tribe shall be deprived of his or her right to vote, if otherwise qualified, because of temporary absence from the Reservation as provided in Article IX § 5 of the Revised Constitution. Therefore, such voters may cast absentee ballots as described herein. Early voting shall be governed by Section 1-5-3 below.

- A. Any Tribal member desiring to vote by absentee ballot may request a "Request for Absentee Ballot" form by mail, email, facsimile, telephone, or in person, from the administrative assistant to the Tribal Council not earlier than sixty (60) days nor later than one week prior to the election.
1. The Request for Absentee Ballot form shall be approved by the Election Board and substantially similar to the form included in the Appendix to this Code, shall be signed by the voter, and shall require the voter to list:
 - a. The name and mailing address of the voter;
 - b. The voter's age;
 - c. The reason the voter desires an absentee ballot;
 - d. A statement to the effect that the voter is a qualified voter in such election and will be on the date of the election; and
 - e. Whether the voter is requesting that the absentee ballot be mailed, emailed, or faxed to the voter or if the voter plans to obtain an absentee ballot in person.
 2. The Request for Absentee Ballot form shall be returned by mail, email, facsimile, or in person to the administrative assistant to the Tribal Council who shall transfer the forms to the Election Board by the end of the business day.
- B. Upon verification by the Election Board that the voter requesting an absentee ballot appears on the list of eligible voters, the Election Board will forward the absentee ballot to the qualified voter as provided below.
1. All absentee ballots shall be marked "Absentee Ballot" and include instructions requiring the voter to:
 - a. Properly mark the voter's choice of candidates on the absentee ballot;
 - b. Place the absentee ballot in the empty envelope provided with the absentee ballot which is marked "Absentee Ballot;"

- c. Sign the enclosed statement swearing that the voter casting the absentee ballot is an eligible voter and the same individual who requested the absentee ballot; and which is in substantially the same form as that provided the Appendix to this Code; and
 - d. Enclose and seal the "Absentee Ballot" in the envelope marked "Absentee Ballot" and enclose that envelope with the signed statement in another envelope addressed to the Election Board, Mescalero Apache Tribal Administrative Offices, P.O. Box 227, Mescalero, New Mexico.
2. No absentee ballot may be cast after 4:30 p.m. the day prior to the scheduled election. Absentee ballots must be returned to the Election Board by mail or in person.
 3. Upon receipt of an "Absentee Ballot" envelope prior to the close of the polls on Election Day, the Election Board shall compare the signed statement swearing that the individual marking the absentee ballot is an eligible voter and the same individual who validly requested the absentee ballot to the signature on the Request for Absentee Ballot form.
 - a. If the signatures on the Request for Absentee Ballot form and the statement swearing that the individual marking the absentee ballot is the same individual who validly requested the absentee ballot do NOT match, the "Absentee Ballot" envelope shall NOT be opened, NOT be counted, and shall be treated as a spoiled ballot.
 - b. If the signatures on the Request for Absentee Ballot form and the statement swearing that the individual marking the absentee ballot is the same individual who validly requested the absentee ballot do match, the "Absentee Ballot" envelope shall be placed in the Absentee Ballot Box and shall be counted at the time that other ballots are counted.
 4. Absentee ballots received through the mail after the time the polls close on the day of the election shall be invalid and shall not be counted.
 5. If an absentee ballot has been requested and received by an eligible voter, that voter will not be allowed to vote in-person on the scheduled Election Day unless and until the absentee ballot has been surrendered.
- C. The Election Board shall not be responsible for or consider delays caused by the use of the mail to receive or return request forms or absentee ballots.

1-4-2. BALLOTS.

- A. The ballot, bearing the title "Mescalero Apache Tribe" shall be in a form consistent with the use of voting machines. The order of appearance for the offices on the ballot where applicable, shall be:
 1. President;
 2. Vice-President;
 3. Member, Tribal Council; and
 4. Such other offices as the Tribal Council may designate.

The position of candidates' names on the ballot shall be determined by the Election Board by lot.
- B. Voting machines shall be permitted if such machines provide both a written record and a machine tabulation of the votes cast, and otherwise operate so as to preserve the integrity of Tribal

elections.

- C. No candidate's name shall appear more than once on the ballot.
- D. Ballots shall be printed after determination of candidate eligibility is completed by the Election Board; printing shall be completed at least ten (10) days before the election.
- E. Sample ballots shall be printed and made available and posted in at least two (2) public places ten (10) days before the election. A sample ballot shall also be displayed at the voting place within plain view of voters waiting to cast their votes on Election Day. Sample ballots shall be printed on paper of a different color from that of ballots prepared for voting purposes and shall be plainly marked "SAMPLE BALLOT."

1-4-3. VOTING HOURS. Voting hours for all Tribal elections shall be between the hours of 7:00 a.m. and 7:00 p.m.

1-4-4. NUMBER OF ALLOWABLE VOTES IN PRIMARY ELECTIONS; DETERMINATION OF PERSONS ELECTED TO OFFICE.

- A. Tribal voters shall vote for only four (4) Council candidates in the Tribal Primary election.
- B. The eight (8) Council candidates receiving the highest number of votes in the Primary Election shall be the only candidates in the Tribal General Election.
- C. The four (4) Council candidates receiving the highest number of votes in the General Election shall be the duly elected council members.

1-4-5. DISRUPTIVE OR ABUSIVE VOTERS. The Election Board, with the assistance of the Tribal Conservation Department, if necessary, shall remove any disruptive or abusive voter from the voting place.

1-4-6. VOTER PRIVACY AND SECRECY OF BALLOT.

- A. Members of the Tribal Council and all other elective officials of the Mescalero Apache Tribe shall be chosen by secret ballot as required by Article IX § 3 of the Revised Constitution. Nothing in this section shall be deemed to preclude the use of voting machines.
- B. The Election Board shall ensure that ballots are cast in secret by ensuring that each voter marks and deposits his or her ballot in the voting machine while out of view of other voters and Board members.
- C. Board members who become aware of a voter's choice of candidates have a duty not to reveal the voter's choice. Violation of the duty of confidentiality shall implicate § 1-4-1 of this Code.

1-4-7. VOTING INSTRUCTIONS.

- A. Written and visual instructions explaining how to mark ballots and how to deposit them in the voting machines shall be prepared by the Election Board and posted prominently at numerous places at the voting place, including the point at which a voter enters the voting booth or location where the voter marks his or her ballot.
- B. The only candidates for any office in any Tribal election shall be those certified by the Board. Votes cast for any write-in candidate will not be considered or tallied.

1-4-8. VOTER ASSISTANCE AT THE VOTING PLACE.

- A. An eligible voter may request instruction as to:
 - 1. How the ballot is to be marked and deposited in the voting machine;
 - 2. Reading of the candidates' names if the voter is unable to do so; and/or

3. Translation of the ballot by an official interpreter.
- B. An eligible voter may request assistance in the marking of the ballot as the voter instructs if the voter is unable to do so due to blindness or other physical disability.
- C. An eligible voter may request that necessary assistance be provided by a family member or other individual who is present with the voter or by an election board member designated as an interpreter.

1-4-9. VOTER ASSISTANCE OUTSIDE THE VOTING PLACE.

- A. Board members shall visit local jails, rest homes, hospitals, and other nearby places where voters qualified to vote are physically present and unable to leave, during voting hours on Election Day. The following voting procedures shall be followed:
1. At least three (3) Board members (one of which shall be an Election Board Judge and one which shall be an Interpreter) must be present;
 2. Each Board member shall remain in the presence of all other Board members and all ballots cast at all times;
 3. Board members shall verify the identification of voters against the list of qualified voters prepared by the Board;
 4. Each voter must sign the official registry of voters;
 5. Board members shall provide instructions to voters and answer any questions related to the marking of the ballots;
 6. Ballots identical to those prepared for use at the voting place shall be used;
 7. Measures must be taken to provide the voter the greatest privacy possible under the circumstances to protect the secrecy of the voter's ballot;
 8. Each voter shall be provided with an envelope marked "ballot" to the voter in which the ballot may be enclosed and sealed; and
 9. Board members shall provide a secure means of storage for the sealed "ballot" envelopes and voting registry while transporting same to the voting place in order that ballots cast in the manner prescribed herein may be counted along with all other ballots cast in the elections and, thus, included in the final tabulation of votes.
- B. A group of three (3) Board members shall visit the personal residences of elderly or physically disabled Tribal members who are unable to travel to the voting place on the day of the election if requested to do so and if available resources permit.
1. Such requests shall be in a form substantially similar to that included in the Appendix to this Code.
 2. Such requests must be received no more than seven (7) days before the election and no later than 4:30 p.m. the day before the election.

The same procedures listed above at Paragraph A shall be followed.

1-4-10. WATCHERS. The Election Board may permit Watchers to be present during ballot counting. However, nothing herein shall be deemed to require the Board to permit Watchers. If the Board permits a watcher for one individual, the Board shall permit a watcher for any individual requesting one.

1-4-11. EXAMINATION OF BALLOTS. Upon the closing of the polls, the Election Board shall examine all ballots cast, eliminate any invalid or improperly completed ballots and then determine the number of votes cast for each candidate.

1-4-12. TIES. Any tie vote shall be decided by lot by the Election Board as set forth in Article IX § 15 of the Revised Constitution of the Mescalero Apache Tribe.

1-4-13. CERTIFICATION OF ELECTION RESULTS.

- A. The Election Board shall, within forty-eight (48) hours days after the closing of polls, prepare a certification of the results of the election which shall:
1. Contain an oath swearing that each signature evidences the authenticity of the document and the accuracy of the election results contained therein;
 2. Be signed, under penalty of perjury, by each member of the Board;
 3. Contain the following information:
 - a. The number of voters casting ballots in person and the number of voters casting Absentee Ballots;
 - b. The total number of original ballots issued (the number of ballots issued to voters voting in person plus the number of absentee ballots issues;
 - c. The total number of "spoiled" ballots;
 - d. The total number of replacement ballots issued (on the day of the election);
 - e. The total number of voters casting valid ballots (the total number of original ballots issued minus the number of spoiled ballots plus the number of replacement ballots issued); and
 - f. The persons elected to office, the office to which they are election, and the number of votes received by each candidate;
 4. Take a form approved by the Election Board and substantially similar to that appearing the Appendix to this Code; and
 5. Be posted immediately by the Board in at least two (2) public places, one of which being the Tribal Administrative building.

1-4-14. RECOUNT.

- A. In the event that the person receiving the highest number of votes for President or Vice President has ten (10) or less votes more than the person receiving the next highest number of votes, the latter may, upon written request submitted to the administrative assistant to the Tribal Council not later than forty-eight hours after the posting of the results, have the votes for that particular office recounted by the Election Board. The written request for a recount shall be forwarded to the Election Board by the end of the business day.
- B. The candidate placing fifth in the election for Tribal Council may, upon written request submitted to the administrative assistant to the Tribal Council not later than forty-eight hours after the posting of the results, hat the votes be recounted by the Board provided the original count shows that candidate received 95% or more of the number of votes received by the candidate placing fourth. The written request for a recount shall be forwarded to the Election Board by the end of the business day.
- C. In a referendum election where passage or failure is by a margin of ten (10) or less votes, an automatic recount shall be conducted.
- D. Any request for a recount shall be delivered to the Election Board no later than forty-eight (48) hours after the results of the election have been certified and shall be accompanied by a fee of One Hundred Dollars (\$100) which shall be used to cover any costs related to a recount. In the

event that a recount is not required, the fee shall be promptly returned to the individual requesting the recount.

- E. In the event of a recount, the recount will be conducted under the rules and regulations established by the Election Board. The recount will be conducted in the presence of at least a majority of the then-serving members of the Election Board. Should the membership of the Election Board be diminished by death, illness, or other causes which would prevent them from serving, vacancies to the Board shall be filled by the rules set forth in § 1-2-10 and Article IX § 1 of the Revised Constitution.
- F. A recount will not be delayed because of the existence of one or more vacancies on the Election Board, unless the remaining members of the Board, at the time of the recount, number less than five (5). No recount shall be conducted by less than five (5) Board members.

SECTION 5. MISCELLANEOUS.

1-5-1. TRIBAL EMPLOYEES AS CANDIDATES FOR TRIBAL OFFICE. A Tribal employee running for elective office:

- A. Shall not conduct campaigning activities during work hours;
- B. Shall not use Tribal vehicles to conduct such activities; and
- C. Shall not be required to take a leave of absence during the pendency of the election.

1-5-2. PROHIBITION ON CERTAIN CAMPAIGNING. Campaigning shall not be allowed within one hundred (100) feet of an entrance to the voting place during voting hours on the day of an election or while early voting is occurring. Campaigning includes any action on the part of a candidate or any other person, including the posting or distribution of written materials, intended to influence any voter to vote in a particular manner.

1-5-3. EARLY VOTING. It is the policy of the Mescalero Apache Tribe to encourage eligible Tribal members to vote. Therefore, any voter, if otherwise qualified, may be allowed to vote early. Early voting shall be conducted as follows:

- A. Early voting shall be allowed for all elections except for Mescalero School Board elections;
- B. The Tribal Council shall determine the dates and times for early voting in the resolution declaring the election dates; such dates and times shall be after the posting of the ballot and prior to the election;
- C. At least three (3) members of the Election Board, including at least one (1) Interpreter, must be present to conduct early voting;
- D. The Board shall verify that each prospective early voter appears on the list of eligible voters;
- E. Where the Board verifies that the voter is on the list of eligible voters, then the voter will be allowed to vote;
- F. No person allowed to vote early shall be permitted to vote on Election Day; and
- G. Voting shall otherwise occur in the same manner as prescribed herein.

1-5-4. CONSUMPTION OF ALCOHOL OR DRUGS & IMPAIRED VOTERS. Consumption of alcoholic beverages, illegal drugs, or other intoxicants at the voting place is prohibited. No voter who is clearly impaired due to intoxication, being under the influence of drugs, or some other reason, as determined by the Election Board, shall be permitted to cast a ballot.

SECTION 6. DISPUTE RESOLUTION.

1-6-1. PERSONS ALLOWED TO DISPUTE. Only the following persons, hereinafter referred to as “Challengers,” may file a dispute under this Section:

- A. Candidates whose names appeared or will appear on the ballot;
- B. Individuals who have applied for candidacy in the manner required by Article IX § 6 of the Revised Constitution and § 1-5-1 of this Code in the case that the dispute is related to eligibility for candidacy;
- C. The Chairperson of the Election Board; or
- D. Where a dispute arises in a referendum election, any eligible voter.

1-6-2. DISPUTES RESOLVED BY THE ELECTION BOARD. The Election Board shall have exclusive and final authority to decide all disputes concerning the election process EXCEPT those that implicate the Revised Constitution of the Mescalero Apache Tribe.

- A. A dispute raised before or after the day of the election or an appeal from the decision of a Judge must be made in writing and submitted to the Election Board by the Challenger no later than three (3) business days of the occurrence of the circumstance(s) resulting in the dispute or appeal.
- B. Each written dispute must contain the information required below. The Election Board may decline to hear the dispute if the written dispute is incomplete or improperly filed.
- C. The Election Board shall hear the dispute within three (3) business days of the filing of the written dispute. After the hearing, the Election Board shall post its decision as soon as possible after the hearing in at least two (2) public places. Also, the Election Board shall keep a copy of all documentation related to the dispute with its other records.
- D. In general, the Election Board shall conduct all hearings so as to provide the Challenger(s) a fair opportunity to be heard, but shall be mindful of the need to resolve the dispute in a timely manner.

1-6-3. DISPUTES RESOLVED BY THE TRIBAL COURT. The Tribal Court, sitting as a three-judge panel, shall have jurisdiction over disputes implicating the Revised Constitution arising before, on, or after Election Day.

- A. Such disputes must be filed no later than three (3) business days after the date of occurrence leading to the dispute or the date of the election, whichever occurs first.
- B. The Tribal Court shall hear the dispute within three (3) business days of the date that the dispute is filed. The decision of the Tribal Court may be appealed to the Tribal Council sitting as the Supreme Court, if the individual wishing to appeal the decision, or the Chairperson, delivers the following to the administrative assistant to the Tribal Council no later than three (3) business days from the date of the issuance of the decision:
 - 1. A writing detailing the dispute;
 - 2. Copies of the decisions of the Election Board, if any, and the Tribal Court; and
 - 3. The reason for appeal to the Supreme Court.
- C. The Supreme Court shall provide notice of its decision to deny or grant the request for a hearing within three (3) business days of receipt of the appeal.
- D. After hearing an appeal, the Supreme Court shall issue a written decision as soon as possible, detailing any findings and its reasoning with a copy to the Challenger and the Election Board, with a copy placed on file.
- E. Any decision by the Supreme Court, promulgated in compliance with this section, shall be

deemed FINAL.

1-6-4. REQUIRED INFORMATION TO BE CONTAINED IN A WRITTEN DISPUTE. A written dispute shall contain the following information:

- A. Name(s), address(es), and phone number(s) of the Challenger(s);
- B. Detailed description of the occurrence which is disputed;
- C. Date of the occurrence giving rise to the dispute;
- D. The names, addresses, and phone numbers of any witnesses to the Board action or other occurrence;
- E. Any desired remedy or action;
- F. Signature(s) of the Challenger(s); and
- G. Date of such signature(s).

SECTION 7. PENALTIES.

1-7-1. PENALTIES.

- A. Any person found guilty of willfully and knowingly:
 - 1. Voting more than once in anyone election;
 - 2. Voting although ineligible to vote;
 - 3. Casting an improper ballot;
 - 4. Otherwise intending to improperly affect election results, bribing or intimidating voters, the election Board members, the administrative assistant to the Tribal Council, or any other individuals with the intent to improperly affect election results;
 - 5. Detaining, destroying, or altering ballots or documentation pertaining to election results; or
 - 6. Refusing to obey Election Board orders to leave the voting place where the Board has determined that such person has violated this Code or otherwise violating this Code.
- B. Said person shall be sentenced to labor or imprisonment for a period not to exceed one hundred and eighty (180) days, or a fine of Five Hundred Dollars (\$500.00), or both.
- C. Any person found guilty of willfully and knowingly attempting to vote in the regular manner on Election Day, after having cast an Absentee Ballot, shall be deemed guilty of an offense, and the Tribal Court may impose a penalty of imprisonment for not more than thirty (30) days, and shall impose a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

APPENDIX A
STATEMENT OF INTENT

STATEMENT OF INTENT

I, _____ (print name), declare my intent to be a candidate for the office of _____, an elective office of the Mescalero Apache Tribe, and hereby swear that the following statements are true:

1. I have not been convicted of any felony (at any time in the past) or other serious offense (within the last seven (7) years), as defined by Article VI § of the Revised Constitution and the Tribal Code at Section 1-1-4(A) and 1-1-4(B), and I have listed all criminal convictions below completely and accurately. (Please attach and sign additional pages if needed.):

2. I am or will be at least twenty-five (25) years of age at the time of the primary election. My date of birth is: _____.
3. I am an enrolled member of the Mescalero Apache Tribe and have one-quarter (1/4) or more Mescalero Apache blood. My Tribal Census Number is _____.
4. I have resided on the Mescalero Apache Reservation for a period of at least six (6) months immediately prior to the election date, as defined by Section 1-1-4(C) of the Tribal Code, specifically at the following address: _____.

I understand the following:

1. I will be notified by the Election Board at least twenty (20) days before the Election if I am ineligible for candidacy and shall have five (5) days to correct mistakes if those mistakes resulted in my ineligibility.
2. No candidate is permitted to withdraw except by filing a written notice of withdrawal with the administrative assistant to the Tribal Council at least twelve (12) days before the election.
3. If I have been determined to hold a “policy-making position” with the Tribe or with any organization doing business on the Mescalero Apache Reservation and am elected, I shall resign such position.
4. I will be required to take an Oath of Office if elected.

My mailing address is: _____. I may be contacted by phone at: _____ or _____.

I certify that I am signing this declaration under penalty of perjury.

Candidate

Date and time received by Tribal Secretary: _____

Signature of Tribal Secretary Receiving Document

APPENDIX B
AUTHORIZATION TO PERFORM BACKGROUND CHECK

AUTHORIZATION TO PERFORM BACKGROUND CHECK

I, _____, hereby authorize the Mescalero Apache Tribe (the “Tribe”) to investigate my background for purposes of evaluating whether I am eligible to hold elective Tribal office. I understand that the Tribe will utilize an outside firm or firms to assist it in checking such information, and I specifically authorize such an investigation by information services and outside entities of the Tribe's choice. I also understand that I may withhold my permission and that in such a case, no investigation will be done, and I will not be allowed to continue my candidacy for elective Tribal office.

Signature of Candidate

Date

Name of Candidate (Printed)

APPENDIX C
NOTICE OF INELIGIBILITY FOR CANDIDACY

NOTICE OF INELIGIBILITY FOR CANDIDACY

Name of Candidate
Address of Candidate
Mescalero, NM 88340

Dear _____:

As you know, the Mescalero Apache Tribe’s Revised Constitution sets forth certain requirements of candidates for elective office. It is with regret that the Mescalero Apache Election Board must inform you that it has determined you are not eligible for candidacy for the following reason(s):

- _____ You have been convicted of a felony as defined by § 1-1-4(A) of the Mescalero Apache Tribal Code which is prohibited by Article VI, § 1 of the Revised Constitution.
- _____ You have been convicted of a “serious offense” (within the last 7 years) as defined by § 1-1-4(B) of the Mescalero Apache Tribal Code which is prohibited by Article VI § 1 of the Revised Constitution.
- _____ You did not return a Statement of Intent by the date required.
- _____ You returned a Statement of Intent before the deadline, but did not complete the Statement of intent correctly.
- _____ You filed for candidacy for more than one elective office in the upcoming election which is prohibited by Article IX § 14 of the Revised Constitution.
- _____ You are not 25 years of age, of one-quarter Mescalero Apache blood, and/or a resident of the Mescalero Apache Reservation as defined by § 1-1-4(C) of the Mescalero Apache Tribal Code as required for candidacy by Article VIII, § 3 of the Revised Constitution.

If you would like to appeal to the Tribal President for a pardon in order to restore your eligibility for this election or if you wish to correct any omission or other mistake on your Statement of Intent you must do so by _____.

If you have any questions, please feel free to contact the Election Board by mail at P.O. Box 227, Mescalero, NM 88340 or call me at (575) 464-_____.

Sincerely,

Election Board Chairperson

Election Board Secretary

APPENDIX D
REQUEST FOR ABSENTEE BALLOT

REQUEST FOR ABSENTEE BALLOT

I, _____ (please print name), hereby certify that the information contained below is accurate and true to the best of my knowledge and that: 1) I am an enrolled member of the Mescalero Apache Tribe, 2) I am at least 18 years of age as of Election Day, and 3) I am a resident of the Mescalero Apache Reservation, but will not be able to vote in person on the Election Day for the reason(s) indicated below. I, therefore, wish to exercise my right to vote absentee.

Date of Birth: _____

Tribal Census Number: _____

Address (where my absentee ballot or other notice of the Election Board concerning such ballot may be mailed): _____

Reason for Temporary Absence:

- ___ 1. Absence for the purpose of attending an educational institution for purposes of obtaining formal training;
- ___ 2. Absence for the purposes of receiving treatment at a regular hospital, clinic, or sanitarium;
- ___ 3. Absence for purposes of service in the Armed Forces of the United States;
- ___ 4. Absence for purposes of obtaining additional educational training in regularly held training sessions; or
- ___ 5. Absence for any other reason which does not exceed six (6) months' duration, immediately preceding a Tribal Election, without return to the physical limits of the Reservation.

Voter's Signature _____

Date _____

******Please note:** this form must be received by the administrative assistant to the Tribal Council at the Tribal Administrative Office, P.O. Box 227, Mescalero, New Mexico by _____ (deadline for Requests).

WARNING

Any attempt to vote on Election Day after having requested an Absentee Ballot is forbidden by § 1-4-1(B)(5) of the Mescalero Apache Tribal Code unless the Absentee Ballot is surrendered at the time the voter presents him- or herself at the voting place. Any person attempting to cast a ballot in person on Election Day after having cast an absentee ballot shall be guilty of a criminal offense under § 1-7-1 of the Tribal Code. Any other knowing and willful attempt to fraudulently or otherwise improperly affect the results of a Tribal Election may also be punishable under § 1-7-1 of the Tribal Code.

APPENDIX E
ABSENTEE BALLOT AFFIDAVIT

ABSENTEE BALLOT AFFIDAVIT

State of _____)

)ss:

County of _____)

I, _____ (print name), do solemnly swear or affirm that I am an eligible voter of the Mescalero Apache Tribe, that I duly requested and received this form along with an Absentee Ballot. I further swear or affirm that I personally cast the enclosed ballot, or that it was marked according to my instructions because I was unable to do so.

Signature of Voter

Notary or Signature of Election Board Member is required:

SUBSCRIBED AND SWORN to before me this ____ day of ____, 20__.

Notary Public

My Commission expires:_____

Election Board Member witnessing signing of this affidavit:

Signature/Date

****Please note: this form must be completed returned along with the Absentee Ballot otherwise your vote will not be counted. Do not enclose this form inside the envelope marked "Absentee Ballot." Only the Absentee ballot should be sealed therein.

This form and the Absentee Ballot must be **received** by the Election Board, either by mail or in person, no later than 4:30 P.M. the day before the election.

WARNING

Any attempt to vote on Election Day after having requested an Absentee Ballot is forbidden by § 1-4-1(B)(5) of the Tribal Code unless the Absentee Ballot is surrendered at the time the voter presents him- or herself at the voting place. Any person attempting to cast a ballot in person on Election Day after having cast an absentee ballot shall be guilty of a criminal offense under § 1-7-1 of the Tribal Code. Any other knowing and willful attempt to fraudulently or otherwise improperly affect the results of a Tribal Election may also be punishable under § 1-7-1 of the Tribal Code.

APPENDIX F
STATEMENT OF WATCHERS

STATEMENT OF WATCHERS

I, _____, have been designated by _____ to serve as a Watcher. I affirm that I shall act in accordance with the following rules:

1. Once having permitted me to be present, the Mescalero Apache Election Board may, by majority vote, a quorum being present, withdraw its permission for any reason deemed adequate by a majority of the Election Board, and may thereafter expel me.
2. I agree to abide by the Revised Constitution of the Mescalero Apache Tribe and the Tribal Code.
3. I shall abide by rules of common courtesy and tribal custom.
4. I shall exhibit respect for all members of the Election Board.
5. I will under no circumstances be allowed to participate in or interrupt the counting process.
6. If I have a question or complaint other than as to the counting process, that question or complaint will be directed to the Chairperson, or other Board member present who is not actively engaged in the counting process, and shall be asked in such a manner as to avoid disruption of the counting process.
7. If I have a complaint regarding the counting process, such complaint shall be deemed as arising after Election Day and the Election Board shall rule upon that complaint.
8. I shall remain in the area designated by the Election Board for Watchers while ballots are counted.
9. Violation of this Code, as determined by the Election Board shall subject me to criminal penalties.

Furthermore, I swear the following statements are true and accurate to the best of my knowledge:

1. I am not a candidate for elective office in this election.
2. I have been designated in writing by the candidate named above, such writing having been received by the Chairperson of the election Board at least ten (10) days prior to Election Day and am the only individual designated by such candidate to serve as a Watcher.
3. I am an enrolled member of the Mescalero Apache Tribe and an eligible voter.

Signature of Watcher

Date

APPENDIX G
CERTIFICATION OF ELECTION RESULTS

CERTIFICATION OF ELECTION RESULTS

We, the undersigned Mescalero Apache Tribal Election Board Members, certify that the results, as reported below, are the accurate result of a fair Election conducted in accordance with the Revised Constitution of the Mescalero Apache Tribe and the Mescalero Apache Tribal Code.

Number of Original, In Person Ballots Issued: _____
Total Number of Spoiled Ballots: (_____))
Number of Replacement, In Person Ballots Issued: _____
TOTAL NUMBER OF VALID IN PERSON BALLOTS CAST: _____
Number of Original Absentee Ballots Issued: _____
Number of Spoiled Absentee Ballots: (_____))
Number of Replacement Absentee Ballots Issued: (_____))
TOTAL NUMBER OF VALID ABSENTEE BALLOTS CAST: _____
GRAND TOTAL OF VALID BALLOTS CAST: _____

[insert listing of results]

CERTIFIED UNDER PENALTY OF PERJURY.

- 1. _____, Chairperson
- 2. _____, Vice-Chairperson
- 3. _____, Secretary
- 4. _____, Member
- 5. _____, Member
- 6. _____, Member
- 7. _____, Member
- 8. _____, Member

APPENDIX H

REQUEST FOR VOTER ASSISTANCE

REQUEST FOR VOTER ASSISTANCE

I, _____(name of eligible voter), understand that Section 1-4-9 (E) of the Tribal Code allows elderly or physically disabled Tribal members who are unable to travel to the voting place on the day of the election to request that the Election Board visit personal residences if available resources permit.

I understand that the Tribal Code requires that such requests be received no more than seven (7) days before the election and no later than 4:30 p.m. the day before the election.

I am elderly or physically disabled and unable to travel to the voting place on the day of the Tribal election. Accordingly, I request that the Election Board visit my personal residence so that I can cast my ballot. My address is:

_____ (street address), Mescalero, New Mexico.

I understand that the Board will visit my home between the hours of _____ and _____. I understand that the Board will not return if I am not at home. I understand that the Board may be unable to visit my residence due to the lack of time or resources and that I will not have another opportunity to vote.

Further, I understand that only I and my caretaker, _____ (list name of a single caretaker), who is responsible for my care and cannot leave to vote will be allowed to vote at my personal residence.

Signature of Eligible Voter

Date

.....
Election Board Use Only:

Date and Time Received: _____

Signature of Election Board Chair: _____

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CHAPTER 2

TRIBAL COURTS

SECTION 1. GENERAL.

2-1-1. JURISDICTION. The judicial powers of the Mescalero Apache Tribe shall be vested in the Tribal Court, including a Trial and Appellate Court, unless otherwise specified in other Sections of this Code.

- A. Criminal Jurisdiction. The jurisdiction of the Tribal Court over criminal acts or offenses, committed within the exterior boundaries of the Reservation, shall extend to all persons, as defined by §2-1-2 of this Code, except for those matters within the exclusive jurisdiction of the federal or state Courts. In case a criminal act or offense is committed within the Reservation by any person over whom the Tribal Court has no jurisdiction, it shall be the duty of the Tribal Court to order the Reservation Law Enforcement Office or B.I.A. Police to deliver said person to the proper authorities for prosecution under appropriate laws. Should any restriction presently existing as to the exercise of jurisdiction over any class of persons or cases be removed, this provision shall be interpreted to take advantage of such expanded jurisdiction.
- B. Civil Jurisdiction. The jurisdiction of the Tribal Court over civil matters shall extend:
 - 1. To all members of the Mescalero Apache Tribe and all other persons who reside on the Mescalero Apache Reservation; and
 - 2. Over all matters of controversy which arise on the Mescalero Apache Reservation, regardless of the residency of the parties.
- C. No suit or action by a tribal member shall be brought against the Mescalero Apache Tribe, a Constitutional Entity, organized under 25 U.S.C. §476, without its consent.

2-1-2. DEFINITIONS.

- A. A "person" means any individual, Indian or non-Indian, any estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, federal agency, state agency, municipality or county, other Indian tribe or pueblo, or any other entity. This section shall not operate nor be construed in any manner as a waiver of the Tribe's sovereign immunity.
- B. An "Indian" is a person who is enrolled or eligible to be enrolled upon the census rolls of the Mescalero Apache Tribe or any other federally recognized tribe.

2-1-3. COMPOSITION OF THE COURT.

- A. The Mescalero Apache Tribal Court shall consist of as many Judges as the Tribal Council authorizes. There shall be a Chief Judge overall and in charge of the Court and the chief supervisor of all other Judges appointed by the Tribal Council. The pay of the Chief Judge, as well as Associate Judges, shall be set by the Tribal Council.
- B. All trials shall be conducted before a single judge.
- C. Judges.
 - 1. In the event that the Chief Judge, or any Associate Judge recuses himself or herself, or is disqualified, additional Associate Judges may be appointed by the President with the concurrence of not less than three fourths (3/4ths) majority vote of the whole Council. Each Associate Judge shall, after appointment, sit on the panel and hear the cases assigned to the Associate Judge by the Chief Judge. In the event that the Chief Judge is incapacitated, or for any other reason unable to serve, the Chief Judge shall designate an

Acting Chief Judge from among the Associate Judges. In the absence of the Chief Judge, a duly Acting Chief Judge shall perform the duties assigned to the Chief Judge. In the event that the Chief Judge is unable to serve, and has not designated an Alternate Chief Judge, the Associate Judge having the most continuous service on the Court will act as Chief Judge, pending return of the Chief Judge. In the event of equal service, the Alternate Chief Judge shall be designated alphabetically (by last name).

2. The Tribal Court shall regularly consist of the Chief Judge and two Associate Judges, who shall be full time employees of the Tribe. Alternate Associate Judges will be appointed in the same manner as Associate Judges. Alternate Judges will serve for the same term as Associate Judges, and for the salaries specified by the Tribal Council at the time of appointment, provided such compensation is properly budgeted.
3. It is the policy of the Tribal Council that the Alternate Associate Judges will be designated to hear cases by the Chief Judge, on a rotating basis. However, should the Chief Judge appoint an Alternate Associate Judge other than on a rotating basis, such appointment shall be valid.
4. The Chief Judge shall be appointed for a term of two (2) years from the date of appointment, subject to reappointment for continuing terms of two (2) years each by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, unless sooner removed for cause by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, upon recommendation of the President.
5. Associate Judges shall be appointed for a term of two (2) years from the date of appointment, subject to reappointment for continuing terms of two (2) years each by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, unless sooner removed for cause by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, upon recommendation of the President.
6. [Repealed]
7. Alternate Associate Judges shall be appointed for a term of two (2) years from the date of appointment, subject to reappointment for continuing terms of two (2) years each by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, unless sooner removed for cause by a three fourths (3/4ths) vote of the whole membership of the Tribal Council, upon recommendation of the President.
8. In addition to the foregoing, the Tribal Court shall have a Juvenile Division for which one or more Judges may be appointed by the President, with the concurrence of not less than three fourths (3/4ths) majority vote of the whole Council. Judges of the Juvenile Division shall be designated as the Juvenile Judges. A Juvenile Judge shall be an Associate Judge to hear other cases if such appointment is necessary in the opinion of the Chief Judge. The Juvenile Judge shall be appointed for a term of two (2) years from the date of appointment, unless sooner removed for cause by the Tribal Council upon recommendation of the President. The salary of the Juvenile Judge shall be specified by the Tribal Council at the time of appointment providing such compensation is properly budgeted.
9. Where necessary, due to disqualification or extended leave of one or more Judges, the President is authorized to appoint one or more substitute Judges to hear a given case or cases.

2-1-4. QUALIFICATION OF JUDGE.

- A. No person shall be appointed to the office of Tribal Judge unless he is an Indian as defined

herein, not less than thirty-five (35) years nor more than seventy (70) years of age; nor shall any person be appointed as a Tribal Judge who does not have a high school education or its equivalent, who has been convicted of a felony, or, within one (1) year, the last past, of a misdemeanor. The educational requirement shall not be required of those Tribal Judges holding such office upon the effective date of this Mescalero Apache Tribal Code.

- B. For purposes of this Section only, an "Indian" is defined as follows: An individual who possesses at least one-quarter (1/4) Indian blood, and is a member of a federally-recognized Tribe, nation, or bank of Indians, or is an Eskimo, Aleut or other Alaskan native.

2-1-5. JUDICIAL CONFLICT. No Judge shall act in any case in which he has a direct interest.

2-1-6. REMOVAL OF JUDGE. Any Judge of the Mescalero Apache Tribal Court may be suspended or removed for cause upon the President's recommendation after notice and hearing held by the Tribal Council of the Apache Tribe of the Mescalero Reservation by a majority of the elected members of the Council.

2-1-7. DISQUALIFICATION OF JUDGE.

- A. Whenever a party to any action or proceeding, civil or criminal, shall make and file an Affidavit that one Judge of the Judges before whom the action or proceeding is to be tried and heard, cannot, according to the belief of the party making the Affidavit, preside over the action or proceeding with impartiality, that Judge shall be disqualified and shall proceed no further. Another Judge shall be designated for the trial of the cause by the Chief Judge. Such Affidavit must be filed in criminal actions or proceedings not later than five (5) days after arraignment before the Tribal Court; and in civil actions or proceedings, not later than five (5) days after Answer has been filed by the opposing party.
- B. Upon disqualification, the Judge disqualified shall not discuss the case with any other Judge, and at the time of hearing, the disqualified Judge shall not appear in the Courtroom. Failure to disqualify a Judge within the time periods set forth above shall be deemed as consent of the party to have the Judge hear the case.
- C. Whenever a Judge presiding over any criminal or civil action determines that he cannot hear the case in an impartial manner, that Judge shall disqualify himself. After such disqualification by the presiding Judge, the procedures set forth in Sub-Section A shall be followed.
- D. When, by Affidavit, a party to an action has attempted to disqualify more than one Tribal Judge, then no Judge shall be disqualified.

2-1-8. VACANCY OF JUDICIAL OFFICE. A vacancy in the position of Judge will be filled for the unexpired term by the President with the concurrence of not less than a three fourths (3/4ths) majority vote of the whole membership of the Tribal Council.

2-1-9. OTHER OFFICERS.

- A. The Reservation Law Enforcement Office shall assist the Court in serving as Officers of the Court and carrying out the Orders of the Court.
- B. A Court Administrator shall be selected in accordance with the Tribe's policies and procedures to oversee all administrative Tribal Court matters. Specifically, he or she shall:
1. Supervise all employees of the Tribal Court, except Tribal Court Judges;
 2. Manage the Tribal Court budget and research, apply for and manage grants and other awards;
 3. Work with the Chief Judge and Chief Clerk to create and maintain Tribal Court case dockets; and

4. Otherwise act as the Tribal Department Head for the Tribal Court.
- C. A competent Chief Clerk shall be selected in accordance with the Tribe's policies and procedures to assist the Court in keeping written records of Court proceedings. . It shall be the duty of this Chief Clerk to receive Court filings, administer oaths, collect fines, and make an accounting of collected fines. The Clerk shall keep a file of all cases at the Tribal Court. One or more deputies shall be selected as may be needed from time to time.

2-1-10. COURT SESSIONS.

- A. Sessions of the Tribal Court shall expeditiously pursue the ends of justice. The Chief Judge shall preside, or shall designate another judge selected in accordance with §2-1- 3(C) to preside, in case of his disability, absence, or disqualification. In the event the Chief Judge cannot continue to act by reason of disability, or prolonged absence, the Tribal Council shall designate one or more of the Associate Judges to act as Chief Judge until such time as the disability, or absence, of the Chief Judge is corrected.
- B. Cases will be heard in the Tribal Courtroom at such time as set by the Tribal Judge.

2-1-11. LAWS APPLICABLE.

- A. The Judge presiding in the case shall proceed to hear and determine the case in one (1) day unless continued for cause. In determining cases, the Judge shall rely on the applicable laws in the following Order of precedence:
 1. Tribal Constitution, ordinances, traditions and customs;
 2. Federal laws not in conflict with tribal laws and customs;
- B. The Mescalero Apache Tribal Court shall secure copies of all federal laws and B.I.A. regulations applicable to the conduct of Indians within the Mescalero Apache Indian reservation.
- C. Whenever the Court is in doubt about the meaning of any law, treaty or ordinance, it may request the Tribal Court attorney to furnish an opinion on the point in question.

Tribal law is intended in all instances to preempt state law.

2-1-12. LEGAL RIGHTS. The presiding Judge shall inform all defendants of their legal rights.

- A. Criminal Complaints:
 1. The offense charged;
 2. The penalty provided for the offense charged;
 3. The right to bail;
 4. The right, if any, to trial by jury;
 5. The right to an attorney at the defendant's own expense;
 6. The right to remain silent, and a warning that any statement made by the defendant may be used against the defendant.
- B. Civil Complaints. At the request of the civil defendant the Judge shall make himself available to explain the following:
 1. The nature of the Complaint;
 2. The damages or remedy sought by the Complaint;
 3. The fight to answer;

4. The right to hearing with witnesses to be examined and cross-examined.
5. The right to jury trial where appropriate.

2-1-13. RIGHT TO APPEAL. Deleted as inconsistent and repetitive (April, 1998).

2-1-14. COURT OF APPEALS. Deleted as inconsistent and repetitive (April, 1998).

2-1-15. COMPLAINTS. Any Complaint filed in the Mescalero Tribal Court must bear the signature of the complainant or complaining witnesses.

2-1-16. PARTIES. Any party served with an Order, Subpoena, Warrant, Summons, or Command duly issued, made or given by the Mescalero Apache Tribal Court, must appear in Court at the time and date stated on such document or in willful cases, be in violation of Chapter 10, §10-1-9 of this Code. Party, when used in the sense of "party to the ease" shall mean "one of the opposing litigants in a judicial proceeding." The term "party" may in other situations shall mean "one who is interested in the litigation, or one who has a direct interest in the subject matter of the suit."

2-1-17. WITNESSES.

- A. The Court shall issue Subpoenas for the attendance of witnesses. This may be on their own demand or on the request of any of the parties to the case.
- B. Failure to obey such Subpoena shall be deemed an offense as provided in §10-1-9 of this Code. Service of Subpoena shall be made by Reservation Law Enforcement Officers or by special officers appointed by the Court.
- C. A Subpoena is an Order from the Court to an individual to appear before the Court at a specific date and time then and there to be a witness in the case for the party who has sought the witness to appear.

2-1-18. RIGHT TO JURY, FEES, SELECTION.

- A. Criminal Cases:
 1. The right to a trial by jury upon request made within ten (10) days of the arraignment shall be afforded to all defendants.
 2. No jury fee shall be required in a criminal case.
- B. Civil Cases. In any civil action any party may request a jury trial by a six (6) person jury by filing with the Court a written request within ten (10) days after the Answer has been filed and by tendering a jury fee in the amount of Ten Dollars (\$10.00).
- C. Procedure.
 1. The Tribal Council shall each year submit to the Court a list of sixty (60) names of members of the Mescalero Apache Tribe above the age of eighteen (18) years who live on or near the Reservation. The persons whose names appear on the list shall comprise the total jury pool for that year.
 2. At least five (5) days prior to trial, the Chief Judge of the Tribal Court shall, in the presence of the Court Clerk, select at random the names of twenty-five (25) persons who shall be summoned to appear in Court on the date and at the hour prescribed.
 3. Prior to impaneling the jury, the presiding Judge may excuse any person for good cause shown, such as: age, infirmity, or unavailability.
 4. At the date and the hour prescribed in the Summons, the Court Clerk shall impanel the jurors present. The presiding Judge shall thereupon question the panel concerning their relationship to the parties involved, knowledge of the case, or any other pertinent fact.

The Judge shall thereupon excuse any jurors whose ability to fairly hear the case is in doubt. The list of the remaining jurors shall be presented to the parties to the action who shall, beginning with the plaintiff or prosecution, as the case may be, alternatively strike the name of one juror until only seven (7) names remain. These seven (7) persons shall then be sworn in as the jury. One (1) juror shall serve as a substitute juror. He will be excused from the panel when the jury is called on to deliberate, except in the event of the illness or other indisposition of one of the regular jurors. In such event the substitute juror shall act and deliberate as a regular juror.

- D. All jurors in both civil and criminal actions shall be paid the sum of Thirty-five Dollars (\$35.00) each day of trial. Juror payments shall be made after authorization of the Tribal Council.

2-1-19. STATUTE OF LIMITATIONS. Unless otherwise specified, all causes of actions or lawsuits filed in Tribal Court must be brought within the time hereinafter prescribed, after their causes accrue, and not afterwards: Civil Actions: Three (3) years; Criminal Actions: Two (2) years.

- A. Extensions. Actions for relief from fraud, mistake, or conversion shall not be deemed to have accrued until the fraud, mistake, injury, or conversion complained of shall have been discovered by the party aggrieved.

The death of the party aggrieved shall entitle his representative or successor in interest to commence an action in his stead for one (1) year after death.

Minors and incapacitated persons shall be given an extension of one (1) year from the determination of such incapacity within which to commence any accrued causes of action.

- B. Commencement. Actions shall be deemed commenced upon the filing in the Tribal Court Clerk's Office of the petition, declaration, or other prayer for judicial relief
- C. Term of Judgment. Actions founded upon any judgment of the tribal judiciary may be brought within seven (7) years from and after the rendition or revival of the judgment.

SECTION 2. CRIMINAL PROCEDURE.

2-2-1. RULES OF PROCEDURE. In addition to the procedural rules stated in this Section, the Tribal Court shall promulgate rules of criminal procedure to be followed in Tribal Courts, subject to the ratification of such rules by the Tribal Council prior to them becoming effective.

2-2-2. WARRANTS TO APPREHEND.

- A. The Court shall have the authority to issue Warrants to Apprehend. Such Warrants are to be issued only after Complaints have been filed. Service of Warrants shall be made by Reservation Law Enforcement Officers or by a Reservation Law Enforcement Officer appointed by the Court.
- B. A Warrant is an Order to a Reservation Law Enforcement Officer to apprehend by arrest the individual named on the Warrant and to take the said individual either immediately before the Court, or alternatively, to jail until such time as the individual can be brought before the Court.

2-2-3. ARRESTS. No Reservation Law Enforcement Officer or other officer shall arrest any person for any offense defined in this Code or for a violation of federal law, except when such offenses shall be committed in his presence or he shall have reasonable evidence that the person arrested committed an offense, or he shall have a Warrant fix the apprehension of that person.

2-2-4. SEARCH WARRANTS.

- A. The Court shall have authority to issue Warrants of Search and Seizure of the premises and property of any person under the jurisdiction of the Court. However, no Warrant of Search or Seizure shall be issued except upon an Affidavit duly executed before the Chief Judge or one of the Associate Judges and must be based upon reliable information warranting such issuance.

- B. No Warrant for Search or Seizure shall be valid unless it contains the name or description of the person or property to be searched, charges the commission of some offense set forth in this Code, or federal law, and describes the articles to be seized and bears the signature of the Chief Judge or one of the Associate Judges. All Warrants shall show and bear the date of issuance.
- C. Service of Warrants of Search and Seizure shall only be made by a Reservation Law Enforcement Officer or an officer appointed by the Court. A Return of the Warrant of Search and Seizure shall be filed in the Court no later than thirty-six (36) hours after it is served, unless that time is extended by the Chief Judge.

2-2-5. SEARCH WITHOUT WARRANT. No Reservation Law Enforcement Officer or other authorized officer shall search or seize any property without a warrant unless he shall know, or have reasonable cause to believe, that the person in possession of such property has gained such possession unlawfully or used the property in the commission of a crime.

2-2-6. ARRAIGNMENTS.

- A. As soon as possible after apprehension, the defendant shall be brought before the Judge for arraignment. Arraignment shall be held in open Court where the Judge shall read the Complaint to the defendant, deliver a true copy of the Complaint to the defendant, explain the Complaint to the defendant, advise the defendant of his rights and give the defendant an opportunity to enter a plea of guilty, not guilty, guilty with an explanation, or no contest.
- B. If the defendant shall enter a plea of guilty, guilty with an explanation, or no contest, the Judge shall inquire if the defendant has any reason for not being sentenced at that time. If no reasons are advanced, the Judge may pass sentence at that time or set a date for the passing of sentence. If the defendant states reasons why sentence should not be passed at that time, the Judge upon due consideration shall act thereon within his discretion.
- C. If the defendant enters a plea of not guilty, the Judge shall set a date for trial in accordance with §2-2-10 of this Code.
- D. If the defendant does not enter any plea, the Judge shall enter a plea of not guilty on behalf of the defendant, and shall set a date for trial, in accordance with §2-2-10 of this Code.

2-2-7. COMMITMENTS. No defendant shall be detained, jailed or imprisoned under these ordinances for a longer period than seventy-two (72) hours unless there be issued a Commitment Order signed by the Court. There shall be issued for each defendant held for sentencing a final commitment on forms to be prescribed and adopted by the Chief Judge of the Tribal Court.

2-2-8. BAIL OR BOND. Any defendant arrested for an offense may be released upon furnishing bail or bond. A cash bond may be furnished by the accused or by his bondsman to a Tribal Judge or person designated by the Chief Judge to receive bond. No bond shall be required in excess of twice the maximum penalty specified in this Code. The Judge in his own discretion may release persons on their own recognizance or to the custody of other persons. In the Judge's absence, bond may be set by a schedule according to the crime charged except where the defendant has been charged with the commission of what would be a major federal crime as defined at 18 U.S.C. §§1152, 3242. Bond in this instance shall not be specifically limited, but must not be excessive.

2-2-9. FORFEITURE OF BAIL. If the defendant fails to appear for trial or when his personal appearance in Court is ordered by the Court, the Court may enter his failure to appear on the record and forfeit any bond or money posted without further proceedings, or the Court may issue a Warrant for the arrest of the defendant, or both.

2-2-10. TIME LIMITATION. In all criminal actions, the defendant shall be tried within one hundred eighty (180) days of the date of the filing of a Complaint or within one hundred eighty (180) days of the date of arrest, whichever is later. In the event a new trial is granted or a conviction is reversed on appeal, a

subsequent trial shall be commenced within one hundred eighty (180) days of the date of entry of the Order granting the new trial. The time for commencing a trial may be extended only by the Tribal Council where the defendant is solely responsible for the failure to comply with the time limit and cannot show good cause for such failure. The Tribal Prosecutor may seek an extension of the time period for commencing trial beyond the one hundred eighty (180) day period, within said period, by filing with the Clerk of the Tribal Council a Verified Petition for Extension concisely stating the facts supporting the allegation that the defendant is solely responsible for the failure to comply with the time limit before the expiration of the original period and forthwith serve a copy thereof on the defendant as generally provided by the Tribal Code. Hearing on such Petition shall be held upon five (5) days' notice to the parties. The Tribal Council may grant an extension of up to thirty (30) days. No further extensions shall be allowed. In the event that a trial of any person described in this Section does not commence within the time herein specified, or within the period of any extension granted as provided in this Section, the proceeding against such person shall be dismissed with prejudice by the Tribal Court.

2-2-11. RELATIONS WITH THE COURT. No member of the Tribal Council, Tribal Executive Staff, Tribal President, or member of the Apache Tribe of the Mescalero Reservation, shall obstruct, interfere with or control the functions of the Mescalero Apache Tribal Court, or influence such functions in any manner except as provided in this Code or when called upon by the Court for advice or information; to do so will be a violation of Chapter 24, §2, Rules of Criminal Procedure.

SECTION 3. CIVIL PROCEDURE.

2-3-1. RULES OF PROCEDURE. In addition to the procedures stated in this Section, the Tribal Court with the acceptance and approval of the Tribal Council, shall promulgate Rules of Civil Procedure to be followed in the Tribal Courts in all civil case.

2-3-2. NOTICE.

- A. No judgment shall be given on any suit unless the defendant has been given notice of such suit pursuant to this Section.
- B. Evidence of notice, actual or constructive, shall be kept as a part of the record in the case.

2-3-3. RESERVED FOR FUTURE USE.

2-3-4. COMPLAINTS.

- A. Civil suits shall be commenced by the filing of a Complaint by the party bringing suit. The Complaint shall be filed with the Court Clerk, who shall assist the complainant in preparing the Complaint. All Complaints must be signed by the complainant.
- B. The Complaint shall state the nature of the relief for which the complainant is suing, and shall also state the name or names, and address or addresses, of the defendant or defendants. The complainant shall consult with the Clerk of the Court before filling out the Complaint. Similarly, the defendant shall seek the assistance and guidance of the Clerk before filling out an Answer.
- C. Upon receipt of the Complaint, the Court Clerk shall prepare a Summons to be signed by the Judge. Said Summons shall be attached to the Complaint and addressed to the defendant, requiring him to appear before the Court within twenty (20) days, or any such shorter period as may be set by the Judge signing the Summons. The Summons shall state that unless the defendant appears within the time set forth, the judgment may be entered against him.

2-3-5. SERVICE OF PROCESS.

- A. The original Summons and a copy of the Complaint shall be served personally by an officer of the Court upon the defendant or upon a member of his household who is over the age of fourteen (14) years. The officer serving the Summons and Complaint shall secure the signature of the person receiving them and file a Return with a Clerk of the Court acknowledging that service was

made, the time, date and place of service and the name of the person served. The Court Clerk shall file the Return and the Acknowledgment when received.

- B. If service cannot be made as in Subsection A, the Court Clerk shall send a copy of the Summons and Complaint by registered mail, return receipt requested, to the last known address of the defendant. Upon the receipt of a returned receipt bearing the signature of the defendant, the Clerk shall file same and the defendant shall have twenty (20) days to answer the Complaint from the date of his signature before judgment is entered.
- C. If service cannot be made and there is reason to believe that the defendant is residing at another Indian reservation, a copy of the Summons and Complaint shall be forwarded to the B.I.A. Special Officer for said Reservation along with a letter from the Judge requesting him and authorizing him to make service upon the defendant and to forward a Return when service is affected. The defendant shall have twenty (20) days to answer from the date of service before judgment is entered.
- D. If the defendant, after being served, fails to appear and answer within the required time, the case shall be heard by the Court at any time thereafter. If the defendant after being served, answers within the allotted time, the case shall be placed on the trial calendar and tried as soon as possible.
- E. Personal Service of Process Outside the Reservation.
 - 1. Any person, whether or not a member of the Tribe or resident of the Mescalero Apache Reservation who in person or through an agent does any of the acts enumerated in this subsection thereby submits himself or his personal representative to the jurisdiction of the Courts of the Tribe as to any cause of action arising from:
 - a. The transaction of any business within the Reservation;
 - b. The operation of a motor vehicle within this Reservation;
 - c. The commission of a tortuous act within the Reservation;
 - d. With respect to actions for divorce, separate maintenance or annulment, the circumstance of living in the marital relationship within the Reservation, notwithstanding subsequent departure from the Reservation as to all obligations arising from alimony, child support or real or personal property settlements under Chapter 3 of this Code, if one party to the marital relationship continues to reside within the Reservation.
 - 2. Service of process may be made upon any person subject to the jurisdiction of the Courts of the Tribe under this section by personally serving the Summons upon the defendant outside the Reservation and such service has the same force and effect as though service had been personally made within the Reservation.
 - 3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction is based upon this section.
 - 4. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.

2-3-6. SUBSTITUTED SERVICE OF PROCESS.

- A. When any plaintiff or his agent in any civil action or proceeding commenced before the Tribal Court shall have attempted to serve a defendant in the manner and under the form of process for personal service pursuant to §2-3-5(A) or §2-3-5(B)B of this Code, and having been unable to secure such personal service, shall file a sworn statement with the Mescalero Apache Tribal

Court, stating that the defendant resides or has gone off the Reservation, or has concealed himself within the Reservation, has avoided service of process upon him, or his whereabouts cannot be discovered after due inquiry and search has been made, or is in any manner situated so that process cannot be served upon him, then and in such case, it shall be the duty of the Tribal Court to issue a Notice of the Pendency of said action or proceeding, which shall be posted at the Administrative Offices of the Mescalero Apache Tribe; the Mescalero Service Unit, Indian Health Service; the United States Post Office, Mescalero; the Tribal Store; and the Mescalero Apache Tribal Court. In addition, said Notice shall be published in the "Apache Scout, if possible."

- B. If, after attempting service pursuant to §2-3-5(B) registered mail, return receipt requested, service is still unsuccessful, then, in addition to publication as noted in §2-3-6(A) above, the Court clerk shall mail the Summons and Complaint to Defendant via first class mail to the last known address of Defendant.
- C. The notice shall contain the names of the plaintiff and the defendant in the cause, or if there is more than one defendant to the cause, the notice shall contain the name of said plaintiff and the names of the defendants against whom constructive service is sought, a statement of the general objects of the action and shall notify the defendant or defendants that unless they enter their appearance in said cause on or before the, day named in said notice, judgment will be rendered in said cause against them by default. Said notice shall be signed by the Judge of the Tribal Court and such notice shall indicate the days for which said notice shall be posted.
- D. Such publication shall be posted for a period of thirty (30) days in the manner indicated above.

A suggestion for such notice is as follows:

TRIBAL COURT OF THE MESCALERO APACHE TRIBE
MESCALERO, NEW MEXICO

_____ ,

Plaintiff,

vs.

NO. _____,

Defendant,

NOTICE OF PENDENCY OF SUIT

THE MESCALERO APACHE TRIBE TO: _____
(Person to whom notice is being given)

against whom said substituted service by posting is hereby sought to be obtained:

GREETINGS:

YOU ARE HEREBY NOTIFIED that there is pending in the Tribal Court of the Mescalero Apache Tribe, a civil cause wherein the Plaintiff, named above, has filed a Complaint to _____ (indicate nature of Complaint).

Unless you enter your appearance in said cause on or before the ____ day of _____, 20____, (twenty (20) days after the end of the fourth week), judgment and decree may be rendered in said cause against you by default.

WITNESS MY HAND AND SEAL of the said Court at Mescalero, New Mexico, this ____ day of _____, 20____.

Tribal Judge

This notice shall be posted from the ___ day of _____, 20___, to the ___ day of _____, 20___.

- E. Whenever notice is given pursuant to this section, a copy of the notice shall be mailed, return receipt requested, to the last known address, if any, of the defendant.

2-3-7. SETTLEMENT AND WITHDRAWAL OF COMPLAINT. It is the policy of the Tribe to minimize all litigation to those issues not easily resolved. To this end, settlement negotiations are to be encouraged. Any party or a witness deemed necessary to settlement by the Court who fails to appear at a pre-trial settlement conference shall be subject to contempt proceedings. Rules governing the issuance of Summons to appear at such a settlement conference shall be governed by the Subpoena provisions of §2-1-17. Such a conference may be called by the Court before a Complaint has formally been filed.

A complainant or plaintiff may withdraw his Complaint at any time upon his own request provided there has been no Answer filed by any opposing parties or defendant, then such civil action may only be withdrawn upon the concurrence and agreement of both the complainant or plaintiff and the opposing parties or defendants having so filed.

2-3-8. JUDGMENTS IN CIVIL ACTIONS.

- A. In all civil actions, judgment may consist of an Order of the Court awarding money damages or legitimate expenses to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.
- B. Where the injury inflicted was the result of carelessness on the part of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.
- C. Where the injury was deliberately inflicted, judgment may impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.
- D. Where the injury was inflicted as the result of an accident where both the complainant and the defendant were at fault, the Court shall determine the case on the basis of the evidence brought before it, assessing against the party found to be most at fault the total of damages minus an amount of damages found to have been caused by the party the least at fault.
- E. After the rendition of a judgment for money damages, the Court may hold a hearing upon five (5) days' notice to the judgment debtor to inquire into any property which is not exempt by law in his possession or under his control to be applied toward the satisfaction of the judgment creditor or apply on the judgment in installments, such portion of his nonexempt income, however or wherever earned or acquired, as the Court may deem proper after due regard for reasonable living expenses and any payments required to be made by the judgment debtor by virtue of law or prior Order of a Court or under wage assignments outstanding. The Court may, from time to time, modify an Order made under this Section upon application of either party upon notice to the other. The failure or neglect to comply with an Order or direction of the Court shall be punished as for contempt.

2-3-9. COSTS IN CIVIL ACTIONS. The Court may assess the costs of the case against the party or parties against whom judgment is given.

2-3-10. LAWFUL DEBT. A judgment shall be considered a lawful debt in all proceedings to distribute a decedent's estate.

2-3-11. RESTRAINING ORDERS AND INJUNCTIONS. The Court upon holding a hearing, may issue temporary restraining orders or permanent injunctions upon receiving evidence that there is probable cause that irreparable harm will occur in absence of action by the Court.

2-3-12. DECORUM BEFORE THE COURT. No person shall comport himself at any stage of the legal proceeding in a drunken fashion. This prohibition against public intoxication shall apply from the time of filing of either the Complaint or pleadings at the Clerk's office, to trial through any actions for post judgment relief. Any person violating this rule shall subject themselves to the contempt powers of the Tribal Court.

2-3-13. PERSONS RENDERING EMERGENCY CARE; RELEASE FROM LIABILITY. No person who shall administer emergency care in good faith at or near the scene of an emergency, shall be held liable for any civil damages as a result of any action or omission by such person in administering said care, except for gross negligence; provided that nothing herein shall apply to the administering of such care where the same is rendered for remuneration or with the expectation of remuneration or is rendered by any person or agent of a principal who was at the scene of the accident or emergency because he or his principal was soliciting business or performing or seeking to perform some services for remuneration.

SECTION 4. APPELATE COURTS.

2-4-1. COURT OF APPEALS. All appeals from the Mescalero Apache Tribal Courts, including all trials and juvenile Courts as established by Ordinance of the Mescalero Tribal Council, shall be heard by the Mescalero Apache Court of Appeals.

2-4-2. COMPOSITION OF COURT OF APPEALS. The Mescalero Court of Appeals shall consist of three (3) judges, consisting of one (1) trial judge and two (2) associate judges, provided that the presiding judge at trial shall not hear the same case on appeal.

2-4-3. NOTICE OF APPEAL. Any party who is aggrieved by a final order or final judgment of the Mescalero Tribal Court may appeal to the Mescalero Court of Appeals by filing a written Notice of Appeal with the Court Clerk within twenty (20) days from the entry of the order of judgment. The Notice of Appeal must name the parties to the appeal, identify the Order of Judgment appealed from and give a short statement of the reason or grounds for the appeal in compliance with §2-4-4. The party filing the appeal must pay the Court Clerk a \$25.00 filing fee at the time of filing the Notice of Appeal. The Clerk shall file the Notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.

2-4-4. GROUNDS FOR APPEAL NOTICE. The Notice of Appeal must state specific grounds for appeal. Legal grounds for an appeal to be considered on the merits by the Court of Appeals consists of the following:

- A. No evidence or insufficient evidence is in the record to support the Trial Court's Order of Judgment;
- B. The Trial Court made a legal error in interpreting or applying the law;
- C. There is no basis in the laws, customs, or traditions of the Tribe for the Trial Court's decision;
- D. In a criminal case, the evidence presented at trial did not show that the defendant was guilty of the offense charged beyond a reasonable doubt;
- E. The Trial Court erred in admitting illegally-seized evidence or inadmissible testimony, the decision of the Court was based upon this evidence or testimony, and the Court's decision could not be supported on the legally-admitted evidence alone;
- F. The Trial Court erred in denying or granting an objection or motion which fundamentally affected the fairness of the trial;

- G. The Court had no jurisdiction to hear the controversy or no jurisdiction over the parties; or
- H. The Trial Court legally erred in its decision.

2-4-5. PARTIES ON APPEAL. The name of the case on appeal shall be the same as that used in the Trial Court except that the Appellant and Respondent shall be so indicated by Plaintiff-Appellant and Defendant-Respondent or by Plaintiff-Respondent and Defendant-Appellant. Forms shall be made available by the Court Clerk.

2-4-6. STAY PENDING APPEAL. In any case in which an appeal is properly filed, the appellant may petition the Trial Court for an Order staying the order, commitment or judgment. The Tribal Judge may grant a stay pending appeal upon reasonable grounds and may require the appealing party to file a bond in an amount sufficient to guarantee performance of the order or judgment.

2-4-7. SUMMARY REVIEW. Within seven (7) working days of the filing of a Notice of Appeal, the Court of Appeals shall review the notice and make a decision as to whether proper grounds have been asserted for an appeal. If legal grounds for an appeal are not stated in the notice, the Trial Court's decision shall be affirmed and the appeal denied. The appealing party shall be given written notice of the decision of the Court of Appeals and notice of his right to amend the Notice of Appeal and re-file within three (3) working days. Only one (1) opportunity to re-file the notices shall be given and no additional filing fee may be charged. Copies of the refiled notices shall be provided to the parties in accordance with §2-4-3. If the Court of Appeals fails to rule within (7) working days, the Trial Court's decision shall be deemed summarily affirmed.

2-4-8. CLERK. The Clerk of the Trial Court shall also serve as the Clerk of the Court of Appeals. Within twenty (20) days after a notice of appeal is filed, the Clerk shall prepare, certify, and file with the Court of Appeals all papers comprising the record of the case appealed. A separate docket shall be maintained for the Court of Appeals in which shall be recorded each stage of the proceedings on each case appealed.

2-4-9. REVIEW BY THE COURT OF APPEALS.

- A. The Court of Appeals will review the record and transcripts and any evidence of the record; the Court may request or grant permission for argument by the parties but shall not hear new evidence.
- B. There shall not be a new trial in the Court of Appeals and, except in cases where insufficient evidence is the basis for appeal, there will be no review of the factual findings at trial.
- C. The Court may request a written statement and argument by each party stating with particularity the Code sections, laws, customs or traditions which have been misapplied by the Trial Court.
- D. Time and place of oral argument is set by the Chief Judge if serving on the panel hearing the case; otherwise, the case is set by the Senior Judge designated by the Chief Judge and presiding on the case.

2-4-10. WRITTEN DECISION. The Court of Appeals shall issue a written decision containing the reason for the decisions which shall be filed with the Clerk. A decision is reached when at least two of the three judges agree. Copies of the decision shall be provided to each of the parties by the Clerk.

- A. The Court of Appeals shall have the authority to issue any of the following decisions:
 - 1. Affirm in whole or in part the decision of the Trial Court;
 - 2. Reverse in whole or in part the decision of the Trial Court; or
 - 3. Remand the case to the Trial Court for further hearing or for the taking of new evidence or testimony on specific issues.

2-4-11. SUBPOENA POWER AND ENFORCEMENT. In addition to the authority vested in the Court of Appeals by §2-4-10(A), the Court of Appeals shall have the power to issue and enforce subpoenas for the attendance of parties at oral argument and for the production of documents or evidence entered as evidence in the Trial Court. The Trial Court shall be primarily responsible for enforcement of its judgment after affirmation on appeal.

2-4-12. FINAL DECISION. All judgments of the Court of Appeals shall be final unless overturned or otherwise modified by the Supreme Court.

2-4-13. COMPOSITION OF SUPREME COURT. The Tribal Council shall sit as the Supreme Appellate Court, with the President as presiding officer but without vote, whenever necessary and may hear arguments on appeal at regular meetings. At least six (6) members shall sit throughout a hearing. A vote of at least four (4) of the six, or a majority of more than six hearing the case, shall constitute a decision. Less than six (6) members may hear a case, if the President determines that conflicts exist, but in that event, the panel must include all members without conflict. Agreement of a majority of a panel with less than six (6) members constitutes a decision.

2-4-14. PETITION OF APPEAL TO THE MESCALERO APACHE SUPREME COURT. An appeal to the Mescalero Apache Supreme Court shall be instituted by the filing of a Petition of Appeal with the President of the Mescalero Apache Tribe requesting that the Mescalero Apache Tribal Council, sitting as the Supreme Court, hear the appeal of the aggrieved party. The Petition for Appeal shall include the names of the parties for the Supreme Court jurisdiction. The Petition for Appeal shall be filed within ten (10) working days of the decision of the Court of Appeals. Any action taken under § 2-4-6 will continue until final decision of the Supreme Court.

2-4-15. JURISDICTION OF THE MESCALERO APACHE SUPREME COURT. The jurisdiction of the Mescalero Apache Supreme Court shall be limited to the following:

- A. In all cases in which the appeal is based on a Tribal or Appeals Court interpretation or application of a provision of the Revised Constitution of the Mescalero Apache Tribe.
- B. Any other case, having proper grounds as defined by §2-4-4, and which has been accepted for appeal by the majority vote of the Supreme Appellate Court qualified to hear the appeal.

2-4-16. SUMMARY REVIEW. Within twenty (20) calendar days after the Petition of Appeals has been filed with the President of the Mescalero Apache Tribe, the President shall present the petition to the Council. If the Supreme Court fails to rule within twenty-five (25) calendar days of filing of the petition, the decision of the Court of Appeals shall be deemed summarily affirmed.

- A. If the petition claims that the jurisdiction of the Supreme Court is based on §2-4-15(A), then the Supreme Court shall review the petition to determine if indeed there is a constitutional claim raised. If there is a constitutional claim, the President of the Tribe shall order the Tribal Council secretary to schedule a hearing, notify the parties of the hearing, and if so demanded by the Supreme Court, require the parties to submit written statements or prepare for oral arguments as defined in §2-4-17. If, however, the Supreme Court determines that there is no constitutional question or it is determined that the constitutional claim is frivolous, the decision of the Court of Appeals shall be final and binding on all parties.
- B. If the jurisdiction of the Supreme Court is based in §2-4-15(B), the Tribal Council, sitting as the Supreme Court of the Mescalero Apache Tribe, shall vote as whether to accept or deny the appeal. If denied, the decision of the Court of Appeals shall be final and binding on all parties. If the appeal is accepted, the Supreme Court shall issue an order for a Writ of Certiorari to the Appeals Court and the President of the Mescalero Apache Tribe may order the Tribal Council secretary to schedule oral argument or notify the parties to submit written statements as defined in §2-4-17. The Supreme Court may, in the alternative, exercise its discretion to rule on the record

without oral or written argument.

2-4-17. REVIEW AND DECISIONS BY THE MESCALERO SUPREME COURT. If an appeal is accepted by the Mescalero Apache Supreme Court, review by the Supreme Court will be limited to the record of the Court of Appeals, however the Supreme Court may request a written statement or argument from each party or other person concerning the issue which was the basis for the appeal to the Supreme Court. Once the Supreme Court has reviewed the Court of Appeals record and has seen or heard any arguments it may have requested, the Supreme Court will issue a written decision either:

- A. Affirming in whole or in part the decision of the Court of Appeals;
- B. Reversing in whole or in part the decision of the Court of Appeals;
- C. Remanding the case to Tribal Court for a new trial;
- D. Give any other judgment it deems just and proper.

Copies of the decision shall be given to each of the parties by the Tribal Council secretary.

2-4-18. SUBPOENA POWER AND ENFORCEMENT. In addition to the authority vested in the Supreme Court by §2-4-15, the Supreme Court shall have the power to issue and enforce subpoenas for the attendance of parties at oral argument and for the production of documents or evidence entered as evidence in the Trial Court. The Trial Court shall be primarily responsible for enforcement of its judgment after affirmation on appeal.

2-4-19. FINALITY. All decisions of the Mescalero Apache Supreme Court shall be final.

SECTION 5. RULES OF EVIDENCE

2-5-1. PURPOSE AND CONSTRUCTION. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, to the end that the truth may be ascertained and proceedings justly determined.

2-5-2. EVIDENCE. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except where the Code or these Rules otherwise provide, by the sound discretion of the trial judge. The Court shall not be bound by common law rules of evidence, or by the rules of evidence which pertain in state and federal Courts, but shall use its own discretion as to what evidence is deemed necessary and relevant to the charge and the defense.

2-5-3. ADMISSIBILITY OF EVIDENCE; DISCRETION OF JUDGE. The judge may in his discretion exclude evidence if he finds that its purported value is outweighed by the risk that its admission will:

- A. Necessitate undue consumption of time;
- B. Create substantial danger of undue prejudice or of confusing the issue or misleading the jury; or
- C. Unfairly surprises a party who has not had reasonable ground to anticipate that such evidence would be offered.

2-5-4. LIMITED ADMISSIBILITY. Whenever evidence which is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

2-5-5. MODE AND ORDER OF INTERROGATION AND PRESENTATION.

- A. Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:
 - 1. Make the interrogation and presentation effective for the ascertainment of truth;
 - 2. Avoid needless consumption of time; and

3. Protect witnesses from harassment or undue embarrassment.
- B. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct.
- C. Leading Questions. Leading questions should not be used on the direct examination of a witness, except as may be necessary to develop his testimony. Ordinarily, leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

2-5-6. ORAL TESTIMONY. In all trials, the testimony of witnesses shall be given orally under oath in open Court, subject to the right of cross-examination. In all cases wherein an interpreter is used, the interpreter shall also take the oath.

2-5-7. DOCUMENTARY AND TANGIBLE EVIDENCE. Documents and other tangible evidence, material and relevant to the case, may be received in evidence if properly identified.

2-5-8. SUBPOENAS FOR ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTARY EVIDENCE. On motion for good cause shown by any party to the cause, or on the Court's own motion, the Court shall issue subpoenas to compel the attendance of witnesses, or the production of books, records, documents, paper, and things necessary to the determination of the cause, over which the Court has jurisdiction.

2-5-9. FINAL ARGUMENT. At the conclusion of the evidence, the plaintiff or the prosecutor and the defendant each shall summarize the proof and make final argument.

2-5-10. JUDICIAL NOTICE. The judge shall take judicial notice of applicable federal and tribal laws, regulations or ordinances. The judge may take judicial notice of:

- A. Specific facts which are certain as not to be the subject of reasonable dispute;
- B. Facts which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; and
- C. Specific facts and propositions which are common every day knowledge within the territorial jurisdiction of the Court.

2-5-11. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS. Whenever a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him to introduce any other part or other writing or recorded statement which in fairness ought to be considered contemporaneously with it.

2-5-12. DEFINITION OF "RELEVANT EVIDENCE". "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

2-5-13. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

2-5-14. GENERAL RULE OF COMPETENCY. Every person is competent to be a witness except as otherwise provided in these rules.

2-5-15. LACK OF PERSONAL KNOWLEDGE. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not consist of the testimony of the witness himself. This rule of

personal knowledge is subject to the provisions of these rules, relating to opinion testimony by expert witnesses.

2-5-16. RELIGIOUS BELIEFS OR OPINIONS. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

2-5-17. CALLING AND INTERROGATION OF WITNESSES BY COURT.

- A. Calling by Court. The Court, at the suggestion of a party or on its own motion, may call witnesses and all parties are entitled to cross-examine witnesses thus called.
- B. Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.
- C. Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

2-5-18. EXCLUSION OF WITNESSES. At the request of a party or on its own motion the Court may order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

- A. a party to the litigation; or
- B. a person whose presence is shown by a party to be essential to the presentation of his cause.

2-5-19. OPINION TESTIMONY BY LAY WITNESSES. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- A. rationally based on the perception of the witness; and
- B. helpful to a clear understanding of his testimony or the determination of a fact in issue.

2-5-20. TESTIMONY BY EXPERTS. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

2-5-21. BASIS OF OPINION TESTIMONY BY EXPERTS. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

2-5-22. OPINION ON ULTIMATE ISSUE. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

2-5-23. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION. The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

2-5-24. COURT APPOINTED EXPERTS.

- A. Appointment. The Court, on motion of any party or its own motion, may enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless he consents to act. A witness so appointed shall be informed of his duties by the Court in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of

his findings, if any; his deposition may be taken by any party; and he may be called to testify by the Court or any party. He shall be subject to cross-examination by each party, including the party calling him as a witness.

- B. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. In civil actions and proceedings, the compensation shall be paid by the parties in such proportion and at such time as the Court directs.
- C. Disclosure of Appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.
- D. Parties' experts of own selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

2-5-25. HUSBAND-WIFE PRIVILEGE.

- A. Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.
- B. General Rule of Privilege. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.
- C. Who may Claim the Privilege. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.
- D. Exceptions. There is no privilege under this rule in a proceeding in which one spouse is charged with a crime against the person or property of:
 - 1. The other;
 - 2. A child or dependent of either;
 - 3. A person residing in the household of either; or
 - 4. A third person committed in the course of committing a crime against any of them.

2-5-26. RELIGIOUS PRIVILEGE.

- A. Definitions, as used in this rule:
 - 1. A "clergyman" is a minister, priest, or similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.
 - 2. A communication is "confidential" if made privately and not intended for further disclosure, except to other persons present in furtherance of the purpose of the communication.
- B. General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.
- C. Who may claim the privilege. The privilege may be claimed by the person, by his guardian, or by his personal representative, if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the communicant.

2-5-27. POLITICAL VOTE.

- 1. General rule of privilege. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot.
- 2. Exceptions. This privilege does not apply if the Court finds that the vote was cast

illegally or determines that the disclosure should be compelled pursuant to the election laws of the Mescalero Apache Tribe.

2-5-28. PUBLIC OFFICER; OFFICIAL INFORMATION PRIVILEGED. A public officer cannot be examined as to official information communicated to him in an official confidence when the public interests would suffer by the disclosure.

SECTION 6. REPRESENTATION BY LEGAL COUNSEL

2-6-1. REPRESENTATION OF THE TRIBE BEFORE THE TRIBAL COURTS. The President of the Mescalero Apache Tribe may direct legal counsel to represent the Mescalero Apache tribe before all Mescalero Tribal Courts, provided that such counsel is not otherwise excused from complying with the Tribal Code.

2-6-2. LIABILITY INSURANCE. The President of the Mescalero Apache Tribe may allow, by written authorization, the Tribe's liability insurance providers to be represented by legal counsel.

2-6-3. LEGAL REPRESENTATION OF PLAINTIFFS. The President of the Mescalero Apache Tribe may allow, by written authorization, plaintiffs appearing before the Mescalero Tribal Court to be represented by legal counsel, when upon the President's examination it appears that the Mescalero Apache Tribe or its insurance provider is likewise represented by legal counsel, provided that they are not otherwise excused from complying with the Tribal Code.

2-6-4. NOT A WAIVER OF SOVEREIGN IMMUNITY. This Section is not a waiver of the Tribe's sovereign immunity from suit and that the Mescalero Apache Tribe's sovereign immunity from suit may only be waived by clear Legislative intent contained in an Ordinance or Resolution of the Mescalero Apache Tribal Council.

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CHAPTER 3

DOMESTIC RELATIONS

SECTION 1. MARRIAGES

3-1-1. RECOGNITION OF PREVIOUS MARRIAGES. All Indian marriages heretofore consummated, whether according to state law or tribal custom and law, are declared valid subject to annulment as provided in §3-1-6 of this Code.

3-1-2. MARRIAGE AND DIVORCE. The Mescalero Apache Tribal Court shall have jurisdiction over Indian marriages and divorces concerning persons living on the Mescalero Reservation. Indian custom and common law marriage and divorce hereinafter consummated shall not be recognized. This provision shall not be a bar to future codified tribal marriage law, or other future official accommodation of tribal marriages.

3-1-3. MARRIAGE. Marriage is a personal relation arising out of a civil contract, to which the consent of the parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization.

3-1-4. SOLEMNIZATION OF MARRIAGE. A marriage within the Reservation may be solemnized by any recognized clergyman or other official duly authorized to perform this ceremony by the laws of the State of New Mexico, only after issuance of a state marriage license. Marriages valid and legal where performed in other jurisdictions are recognized as valid and legal by the Tribe.

All those individuals holding the office of Judge of the Tribal Court be and hereby are designated as representatives of the Mescalero Apache Tribe for the purpose of solemnizing marriages. This designation as representative is to be an incidence and appurtenance to the office of Judge of the Tribal Court. This designation as representative will commence upon a judge's being sworn in and shall cease upon that judge's death, the end of that judges term of office, or upon the judges removal from office. These Tribal Court Judges, as designated representative of the Tribe, are hereby authorized to solemnize any lawful marriages within the state of New Mexico.

3-1-5. MARRIAGE LICENSE.

- A. Any member of the Mescalero Apache Tribe eligible by age and otherwise, as hereinafter defined, may obtain a marriage license from any appropriate authority, including any County Clerk within the state of New Mexico.
- B. Any unmarried male of the age of eighteen (18) years or older and any unmarried female of the age of eighteen (18) years or older and not otherwise disqualified, are capable of consenting to and consummating a marriage.
- C. Any male over sixteen (16) years of age but under eighteen (18) years of age, and any female over sixteen (16) years of age but under eighteen (18) years of age, are to be considered minors, and whenever parents or guardians give consent in writing to the marriage of a minor, he or she thereby assumes secondary financial responsibility (after the minor) to provide for the minor and the children born, until the minor becomes of age. The assumption of this responsibility is to be stated in a written consent. In the event one spouse is an adult and the other is not, then any financial responsibility which the married couple cannot assume shall be the responsibility of the parents of the minor child. All such financial responsibility assumed by the parents shall represent an obligation subject to collection in the event the parents seek repayment in the future from both spouses.
- D. Any male or female under the age of sixteen (16) wishing to obtain a marriage license must have the written consent of their parents or guardians and the approval by Order of the Tribal Court

after Petition and hearing before the said Tribal Court. The parents or guardians giving their written consent thereby assume secondary financial responsibility (after the minor) to provide for the minor and the children born, until the minor becomes of age. The assumption of this responsibility is to be stated in a written consent.

- E. A marriage license must not in any case be granted where either party is under the age necessary to render the marriage absolutely valid, nor shall it be granted where either party is a minor, without previous consent of the parent or guardian of such minor and approval of the Tribal Court when required.
- F. No license to marry shall be issued until both parties have obtained a Certificate of Health from a recognized practicing physician reflecting that they are both free from any communicable disease.

3-1-6. MARRIAGE ANNULLED; CAUSES FOR ANNULMENT. A marriage may be annulled by an action of the Mescalero Apache Tribal Court for any of the following causes existing at the time of the marriage:

- A. That the party in whose behalf it is sought to have the marriage annulled, was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardians or person having charge of him or her unless after attaining the age of consent such party for any time freely cohabitated with the other as husband and wife.
- B. That the former husband or wife of either party was living and the marriage with such former husband or wife was then in force.
- C. That either party was of unsound mind, unless such party after becoming of sound mind, freely cohabitated with the other as husband and wife.
- D. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabitated with the other as husband and wife.
- E. That the consent of either party was obtained by force, unless such party afterward freely cohabitated with the other as husband and wife.
- F. That either party was, at the time of the marriage, physically incapable of entering into the marriage, state, and such inability continues and appears to be incurable.

3-1-7. CHILDREN LEGITIMATE. Where marriage is annulled, all children conceived during the period of the void or voidable marriage and before judgment, are legitimate and succeed to the estate of both parents.

3-1-8. CUSTODY OF CHILDREN. The Mescalero Apache Tribal Court may award the custody of children of a marriage annulled to either parent and may also provide for their education, support and maintenance out of the property of either parent.

3-1-9. DIVORCE.

- A. The Mescalero Apache Tribal Court shall have authority to grant divorce to any person residing on the Mescalero Apache Reservation when one of the parties is an Indian who has lived on the Reservation for at least six (6) months before filing a Petition.
- B. Marriage is dissolved only:
 - 1. By the death of one of the parties; or
 - 2. By the judgment of the Mescalero Apache Tribal Court decreeing divorce of the parties where either of them is an Indian residing on the Mescalero Apache Reservation; or
 - 3. By Final Decree of Divorce by any Court of competent jurisdiction.

3-1-10. CAUSE OF DIVORCE. Grounds or basis for the granting of any divorce shall be for the complete breakdown of the marriage relationship.

3-1-11. LEGITIMACY OF CHILDREN. Legitimacy of children born before the commencement of divorce action is not affected; all children conceived but not born before the commencement of the divorce action are presumed to be the legitimate children of the marriage until the contrary is proven.

3-1-12. SEPARATE MAINTENANCE, SUPPORT, AND ALIMONY.

- A. In any proceeding for the dissolution of marriage, the Court may make and enforce by attachment or otherwise, an Order to restrain the use or disposition of the property of either party, or for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The Court may make an Order, relative to the expenses of the proceeding, as will ensure either party an efficient preparation of his case.
- B. On final hearing of a divorce proceeding, the Court:
1. May allow either party such a reasonable portion of the spouse's separate property, or such a reasonable sum of money to be paid by either spouse, either in a single sum, or in installments, as alimony, as under the circumstances of the case may seem just and proper;
 2. May modify and change any Order in respect to alimony allowed either spouse, whenever the circumstances render such change proper;
 3. Shall calculate the amount of support needed for the care and maintenance of any shared child(ren) and each party's obligation to pay such support according to the calculations provided at § 3-4-7 and accordingly, order support to be paid as provided in section 4 of this Chapter;
 4. Shall apportion or order the sale of the property of the parties and the creation of a fund from the proceeds of such sale to provide for the support of any child(ren), as may seem just and proper in light of the above calculations;
 5. Shall determine the control of the property of the parties, or fund created by the Court for the support of any child(ren), as may seem just and proper in light of the above calculations; and
 6. Shall include in the final divorce order for the guardianship, care, custody, support, and education of any minor child(ren).
- C. The Court may modify and change any Order in respect to the guardianship, care, custody, or education of any child(ren), whenever circumstances render such change proper and in regard to any order providing for the support of any child(ren), as allowed by Section 4 of this Chapter.
- D. The Court shall have exclusive jurisdiction ~~of~~ over all matters in a proceeding under this Section pertaining to guardianship, care, custody, support, and education of child(ren), property apportioned or funds created for their support, so long as the child(ren) remains under the age of eighteen (18), unless the Children's Court has jurisdiction over such child(ren) under 311-2-1, then the Children's Court shall have concurrent jurisdiction.
- E. If any of the property apportioned or funds created for the support of any child(ren) shall remain and be undisposed of at the time the child(ren) reach eighteen (18) years of age, such undisposed property or funds may be disposed of by the Court as it may deem just and proper.
- F. Unless otherwise provided above, the Court shall follow the establishment of parentage and child support enforcement procedures provided hereafter.

SECTION 2. PROPERTY LAW.

3-2-1. LAW APPLICABLE TO PROPERTY RIGHTS. The property rights of husband and wife are governed by this Section unless there is a marriage settlement containing stipulations contrary thereto.

3-2-2. METHODS FOR HOLDING PROPERTY. Husband and wife may hold property as joint tenants, tenants in common, or as community property.

3-2-3. SEPARATION OF PROPERTY; ADMISSION TO DWELLING OF SPOUSE. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

3-2-4. CONTRACTS OF INDEMNITY; NO OBLIGATION OF COMMUNITY PROPERTY UNLESS SIGNED BY BOTH HUSBAND AND WIFE. It is against the public policy of the Tribe to allow one spouse to obligate community property by entering into a contract of indemnity whereby he will indemnify a surety company in case of default of the principal upon a bond or undertaking issued in consideration of the contract of indemnity. No community property shall be liable for any indebtedness incurred as a result of any contract of indemnity made after the effective date of this Section, unless both husband and wife sign the contract of indemnity.

3-2-5. CLASSES OF PROPERTY.

A. "Separate property" means:

1. Property acquired by either spouse before marriage or after entry of decree of dissolution of marriage;
2. Property acquired after entry of a prior divorce decree, unless the decree provides otherwise;
3. Property designated as separate property by a judgment or decree of any Court having jurisdiction;
4. Property acquired by either spouse by gift, bequest, devise or descent;
5. Property designated as separate property by a written agreement between the spouses; and
6. Each spouse's undivided interest in property owned in whole or in part by the spouses as co-tenants in joint tenancy or as co-tenants in tenancy in common.

B. "Community property" means property acquired by either or both spouses during marriage which is not separate property.

C. "Property" includes the rent, issues and profits thereof

D. The right to hold property as joint tenants or as tenants in common and the legal incidents of so holding, including but not limited to, the incident of the right of survivorship of joint tenancy, are not altered by this Section except as otherwise provided.

3-2-6. DEFINITION OF SEPARATE AND COMMUNITY DEBTS.

A. "Separate debt" means:

1. A debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;
2. A debt designated as a separate debt of a spouse by a judgment or decree of any Court having jurisdiction, provided such classification is not binding on any rights of creditors to such a debt, unless the creditor is a party to the suit involved;
3. A debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting

spouse; or

4. A debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage or a separate tort committed during marriage.
- B. "Community debt" means a debt contracted or incurred by either or both spouses during marriage which is not a separate debt.

3-2-7. PRIORITIES FOR SATISFACTION OF SEPARATE DEBTS.

- A. The separate debt of a spouse shall be satisfied first from the debtor spouse's separate property, excluding that spouse's interest in property in which each of the spouses owns an undivided equal interest as a joint tenant or tenant in common. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's one-half interest in the community property or in property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common. Neither spouse's interest in community property or separate property shall be liable for the separate debt of the other spouse.
- B. This Section shall apply only while both spouses are living, and shall not apply to the satisfaction of debts after the death of one or both spouses.

3-2-8. PRIORITIES FOR SATISFACTION OF COMMUNITY DEBTS.

- A. Community debts shall be satisfied first from all community property and all property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.
- B. This Section shall apply only while both spouses are living, and shall not apply to the satisfaction of debts after the death of one or both spouses.

3-2-9. PRESUMPTION OF COMMUNITY PROPERTY. Property acquired during marriage by either husband or wife, or both, is presumed to be community property.

3-2-10. MANAGEMENT AND CONTROL OF OTHER COMMUNITY PERSONAL PROPERTY. Either spouse alone has full power to manage, control, dispose of and encumber the entire community personal property EXCEPT:

- A. Where only one spouse is named in a document evidencing ownership of community personal property; or,
- B. Where both spouses are named in a document evidencing ownership of community personal property.

3-2-11. DISPOSITION AND MANAGEMENT OF REAL PROPERTY WITHOUT JOINDER AND MANAGEMENT OF COMMUNITY PERSONAL PROPERTY SUBJECT TO MANAGEMENT OF THE ONE SPOUSE ALONE WHERE SPOUSE HAS DISAPPEARED.

- A. If a spouse disappears and his location is unknown to the other spouse, the other spouse may, not less than thirty (30) days after such disappearance, file a Petition setting forth the facts which make it desirable for the petitioning spouse to engage in a transaction for which joinder of both spouses is required to manage, control, dispose of, or encumber community personal property or to engage in a transaction involving property which the disappearing spouse has sole authority to manage, control, dispose of, or encumber.
- B. The Petition shall be filed in Tribal Court.

- C. The Tribal Court shall appoint a guardian ad litem for the spouse who has disappeared and shall allow a reasonable fee for his services.
- D. A notice, stating that the Petition has been filed and specifying the date of the hearing accompanied by a copy of the Petition, shall be issued and served on the guardian ad litem and shall be posted as provided in §2-3-6 of this Code.
- E. After the hearing, and upon determination of the fact of disappearance by one spouse, the Tribal Court may allow the petitioning spouse alone to engage in the transaction for which joinder of both spouses is required to manage, control, dispose of, or encumber community personal property or to engage in a transaction involving property which the disappearing spouse alone has authority to manage, control, dispose of, or encumber.
- F. Any transfer, conveyance, mortgage or lease authorized by the Tribal Court pursuant to Sub-section E of this Section shall be confirmed by Order of the Tribal Court, and that Order of Confirmation may be recorded in the office of the Tribal Clerk.

SECTION 3. PARENTAGE.

3-3-1. DUTY OF PARENTS TO PROVIDE SUPPORT AND NEED TO ESTABLISH PARENTAGE.

- A. It is the policy of the Tribe that each child has the right to, deserves, and shall receive proper care and maintenance.
- B. In addition, the parents of each child should be primarily and principally responsible for the care and maintenance of their biological child(ren).
- C. In order to ensure that each child is provided for, the parentage of each child must be established where such parentage is denied or not acknowledged or where proceedings to compel child support are initiated.
- D. Thus, the Tribe has promulgated the following Section meant to fairly and with certainty establish the parentage of each child.

3-3-2. JURISDICTION OF PROCEEDINGS TO ESTABLISH PARENTAGE. Jurisdiction over proceedings to establish the parentage of any individual child before the Court shall be ~~is~~ vested in the Mescalero Apache Tribal Court, unless the Children's Court has jurisdiction over such child under § 11-2-1, then the Children's Court shall have concurrent jurisdiction.

3-3-3. DEFINITIONS. The definitions provided below shall be used in the remainder of this Chapter.

- A. "Adoption" means an order by the Court under Chapter 4 or another court of competent jurisdiction according to its law whereby:
 - 1. Parental rights and the obligation to provide support of the biological parents in regard to a child terminates; and
 - 2. Such parental rights and the obligation to provide support are transferred to the adoptive parent(s).
- B. "Advocate for the child" means a lay advocate appointed by the Children's Court pursuant to §11-4-7, who has reviewed and strives to adhere to those Child Advocacy Guidelines provided at § 11-4-8 of the Code.
- C. "Agency vested with care, control, and supervision or legal custody" means a state or federal agency that has been vested with certain authority and duties in regard to an individual child by the Children's Court as provided at §11-1-5 (B) and 11-10-10.
- D. "Alleged parent" means the individual whose parentage of a child is at issue.

- E. "Back payments" or "arrearages" means those payments owed by the non-custodial parent, for past months, weeks, or other periods established by the Court, which were not paid when they came due that are in addition to any current support.
- F. "Base child support amount" means that amount calculated pursuant to § 3-4-7 (C) which is based upon the combined gross monthly income of both parents and the number of children and represents the monthly support required of both parents for the care and maintenance of each shared child.
- G. "Child" means any individual before the Court or the Children's Court who is under the age of eighteen (18) and has not been emancipated.
- H. "Children's Court" means that court established by the Tribe under Chapter 11 of the Tribal Code with jurisdiction over child welfare and juvenile justice matters.
- I. "Child support schedule" means the schedule of child support amounts, at § 3-4-7 (E), used for calculating the base child support amount.
- J. "Complainant parent" means the individual, whose parentage is established, who is asserting that the alleged parent is the biological parent of his or her child.
- K. "Current support" means the support payment that is owed by the non-custodial parent for the current week, month, or other period as established by the Court.
- L. "Custodial parent" means the parent who the Court, under Section 1 above, or the guardian or caretaker who the Children's Court, under Chapter 11, has vested with the right to physical custody with the exception of limited periods of time where the non-custodial parent has the right to physical custody.
- M. "Custodial" or "visitation schedule" means the schedule ordered by the Court whereby the custodial parent must relinquish physical custody of the child(ren) to the non-custodial parent for fixed periods at certain times.
- N. "DNA testing" means scientific testing used to determine whether the deoxyribonucleic acid (DNA) sequence of a particular child matches that of his or her alleged parent thereby confirming to a near certainty that the alleged parent is in fact the biological parent of the child.
- O. "Disposable earnings" means an employee's income after deductions required by law for purposes of wage withholding.
- P. "Dividend payments" or "dividends" means those payments distributed from time to time by the Tribe to each Tribal member in varying amounts.
- Q. "Medical support" means the payment of insurance premiums for medical insurance by the non-custodial parent for his or her child to entirely or partially satisfy the support obligation.
- R. "Mescalero Apache Tribal Child Support Enforcement Office" or "MATCSEO" means the Tribal agency established herein at Section 8 to aid in the establishment of paternity and compel support.
- S. "Non-custodial parent" means the parent whom the Court has vested with the limited right to physical custody of his or her child(ren) such that the parent does not provide significant support to the child(ren)'s care and maintenance through the day to day provision of shelter, food, and other necessities and thus is required to pay child support.
- T. "Off-months" means those months of the year which correspond with a change in overall weather or other patterns such that certain kinds of employment are not available, allow for fewer hours to work, or pay less wages than other months of the year.
- U. "On-months" means those months of the year which correspond with a change in overall weather

or other patterns such that certain kinds of employment are available, allow for more hours, or pay more wages than in other months of the year.

- V. "Otherwise variable employment" means employment which varies unpredictably in terms of number of hours worked or wage per hour. Examples of otherwise variable employment include:
 - 1. An individual, working in the service industry not related to tourism, who depends partially on tips for his or her wages;
 - 2. An independent contractor; or
 - 3. A professional writer or artist.
- W. "Parentage" means the biological relationship that exists between a child and his or her parents that obligates the latter to provide support for the care and maintenance of the former.
- X. "Personal information" means information:
 - 1. Related to:
 - a. The identity and location of parties involved in proceedings to establish parentage and/or child support and the enforcement thereof;
 - b. Such parties' past or current living situation, prior occurrences of abuse, past orders, and existing protection orders;
 - 2. That would be considered of a confidential nature by most members of the community.
- Y. "Seasonal employment" means employment with cycles of on-and off-months in terms of the number of hours worked and/or wage per hour. Examples of seasonal employment include employment as:
 - 1. A service provider at a tourist-based hotel, restaurant, or other business;
 - 2. A ski area maintenance worker; or
 - 3. A wild land firefighter or other forest-management employee.
- Z. "Shared children" means the children of the custodial and non-custodial parent who are parties to a particular proceeding and does not include other children who the custodial or non-custodial parent has with other parents.
- AA. "Voluntary unemployment or underemployment" means an employment status of either parent that:
 - 1. Is not reflective of his or her abilities, educational history, and/or potential earning capacity;
 - 2. Is obtained through the voluntary action of the parent;
 - 3. Involves significantly less monthly gross income than prior employment; and
 - 4. Includes the status of a parent who is incarcerated.

3-3-4. VOLUNTARY ACKNOWLEDGEMENT OF PARENTAGE.

- A. The alleged parent shall:
 - 1. Have the opportunity to voluntarily acknowledge parentage in writing; and
 - 2. Receive notice of the opportunity to voluntarily acknowledge parentage through a statement to that effect in the summons.
- B. In order for the writing to have effect, a copy of such writing shall be provided:

1. To the complainant parent and the Court, and
2. Before or at any time before the Court issues a final order.

3-3-5. DENIAL OF PARENTAGE AND PROCEEDINGS TO ESTABLISH PARENTAGE.

- A. Where the alleged parent denies parentage, proceedings to establish parentage before the Court shall proceed as provided herein.
- B. Any alleged parent who does not explicitly deny or acknowledge parentage shall be deemed as having denied parentage.

3-3-6. ESTABLISHMENT OF PARENTAGE AND DNA TESTING.

- A. The Court shall consider actions taken by the alleged parent which might evidence acknowledgement of parentage such as, but not limited to:
 1. The alleged parent's signature on the birth certificate,
 2. Claiming the child as a dependent for income tax purposes, and
 3. Referring to the child publicly as being the alleged parent's child.
- B. The Court shall order DNA testing of both the complainant and the alleged parent and the child(ren) where:
 1. Conflicting evidence exists as to acknowledgement of parentage; or
 2. Either the complainant or the alleged parent requests such testing, if such request is accompanied by a sworn statement alleging facts denying or asserting parentage.
- C. The order requiring DNA testing must identify an accredited laboratory which performs such testing:
 1. At a reasonable cost; and
 2. In a manner that is legally and scientifically acceptable.
- D. The cost of DNA testing shall fall upon:
 1. The alleged parent if he or she requested testing and results showed that he or she is the biological parent of the child;
 2. The complainant parent if he or she requested testing and results showed the alleged parent was not the biological parent;
 3. Otherwise, both parents shall share the cost.

3-3-7. ESTABLISHMENT OF PARENTAGE AND CHILD SUPPORT PROCEEDINGS. If parentage is established, the Court shall proceed automatically under Section 4 to establish and compel support.

SECTION 4: DUTY TO PAY CHILD SUPPORT AND CHILD SUPPORT AMOUNT.

3-4-1. CHILD'S RIGHT TO SUPPORT.

- A. In order to effectively protect each child's right to support, all proceedings before the Court should comply with certain guidelines designed to ensure that:
 1. The right of the child to support is provided with the least amount of disruption to his or her living situation or tension between his or her parents; and
 2. Each child receives adequate support given the basic needs of the child and his or her parents' ability to pay.

- B. In addition, to ensure that Court orders for support are complied with, each parent and child should be treated fairly and consistently in comparison to all other parents and children.
- C. Thus, the Tribe has promulgated the following Sections to govern the establishment and enforcement of child support.

3-4-2. EXPENSES OF PREGNANCY OR THE DEATH OF A CHILD. Both parents are jointly and severally liable to pay the expenses of the mother's pregnancy and the birth of the child, and should death occur before the child reaches eighteen (18) years of age, the funeral expenses of the child.

3-4-3. VOLUNTARY SURRENDER OF PARENTAL RIGHTS AND CHILD SUPPORT.

- A. Either parent has the right to voluntarily surrender parental rights, to allow for the adoption of his or her child, in a writing that is acknowledged by the Court, as provided at §11-11-8.
- B. However, the Court shall consider whether to acknowledge such writing where circumstances indicate that the parent is surrendering parental rights primarily to avoid his or her duty of support.

3-4-4. ADOPTION AND CHILD SUPPORT. The adoption of a child into another family, by the Court pursuant to Chapter 4 or a court of competent jurisdiction under its laws, discharges the obligation of either or both parents to support the child only after the Court issues the order finalizing the adoption.

3-4-5. THE ESTATE OF A DECEASED PARENT AND THE DUTY OF SUPPORT.

- A. If the non-custodial parent dies and parentage has been judicially established in the deceased's lifetime, acknowledged by the deceased in writing, or by the performance of actions evidencing acknowledgement, the Court shall:
 - 1. Issue a child support order, and
 - 2. Enforce the order:
 - a. Against the estate of the deceased parent,
 - b. However such claim to support shall be subject and subordinate to the claims to support of a surviving spouse and any child(ren) of the deceased and the surviving spouse.
- B. The Court may direct the estate to make periodic payments or payment of a lump sum.

3-4-6. ORDER THAT CHILD SUPPORT IS OWED BY THE NON-CUSTODIAL PARENT, PAYMENT SCHEDULE, AND OTHER CONTENTS. If the Court finds that the non-custodial parent owes child support, the order shall state:

- A. The names of the child(ren) and parents for whom the order has been entered;
- B. A payment schedule providing for payment annually, monthly, or weekly and equal or varying in amount, until the child(ren) for whom the non-custodial parent owes support reaches the age of eighteen (18) years, is adopted, or is otherwise emancipated;
- C. A summary of the facts and calculations that formed the basis for the amount of support ordered;
- D. Any other relevant information.

3-4-7. AMOUNT OF SUPPORT.

- A. The amount owed by the non-custodial parent for the support of his or her child(ren) shall be based on calculations designed to account for all relevant facts, including, but not limited to:
 - 1. The needs of the child(ren);

2. The standard of living and situation of the parents;
3. The relative wealth and income of the parents;
4. The ability of the parents to earn income;
5. Whether the custodial parent is fulfilling the duty to foster good relations between the non-custodial parent and the child;
6. The number of children involved;
7. The ages, physical condition, and health of the parents and the child;
8. Evidence of changes in the total number of dependents being supported by both parties;
9. The subsequent remarriage by either or both parents;
10. The need and capacity of the child for education;
11. The ability of the child(ren) to earn income; and
12. Any other circumstances which would bear on the parent's ability to provide needed support.

B. USE OF CHILD SUPPORT SCHEDULE AND CALCULATIONS TO SET AMOUNT DUE BY NON-CUSTODIAL PARENT.

1. The Court shall:
 - a. Find the base child support amount by using the child support schedule, § 3-4-2 (D), which lists the amount of support required depending on the combined monthly gross income of both parents and the number of children;
 - b. Where the non-custodial parent has been ordered to pay support for other children which he or she shares with a parent other than the custodial parent, at the discretion of the Court, include those children, in addition to shared children;
 - c. Add the following to the base child support amount:
 - i. Work-related day care expenses, and
 - ii. Extraordinary health care expenses;
 - d. Determine the proportion that each parent contributed to the combined monthly gross income; and
 - e. Multiply the amount from (c) by the proportion the non-custodial parent contributed to the combined monthly gross income.
2. The resulting amount shall be the amount owed by the non-custodial parent to the custodial parent each month.

C. DEVIATION FROM CHILD SUPPORT SCHEDULE AND CALCULATIONS.

1. A child support amount based upon these calculations shall be presumed just and proper.
2. If the Court finds that application of the schedule and calculations provided above would be inappropriate and unjust after consideration of the criteria at § 3-4-2 (A) and therefore, that deviation is necessary, then the order shall:
 - a. State the amount that would have resulted from the use of the schedule, and
 - b. Provide a reasonable explanation for deviation in the final order.

D. CHILD SUPPORT SCHEDULE.

CHILD SUPPORT SCHEDULE						
Number of Children						
Both Parents' Combined Gross Monthly Income	1	2	3	4	5	6
\$0-800	\$100	150	150	150	150	150
900	153	155	157	158	160	162
1,000	206	223	226	228	231	233
1,100	224	291	294	298	301	304
1,200	241	351	363	367	371	375
1,300	258	375	431	436	441	445
1,400	275	399	471	505	510	516
1,500	292	423	499	551	579	585
1,600	308	447	527	582	631	654
1,700	324	470	554	612	664	710
1,800	341	494	582	643	697	746
1,900	357	517	609	673	730	781
2,000	373	541	637	704	763	816
2,100	390	564	665	734	796	852
2,200	406	588	692	765	829	887
2,300	422	611	720	795	862	922
2,400	438	635	747	825	895	957
2,500	447	647	761	841	912	976
2,600	455	658	775	856	928	993
2,700	463	670	788	871	944	1010
2,800	471	681	802	886	960	1027
2,900	478	692	815	900	976	1044
3,000	486	704	828	915	992	1062
3,100	494	715	842	930	1008	1079
3,200	500	723	851	940	1019	1090
3,300	505	731	859	949	1029	1101
3,400	511	738	867	958	1038	1111
3,500	516	745	875	967	1048	1121

3,600	522	752	883	976	1058	1132
3,700	527	760	891	985	1067	1142
3,800	532	767	899	994	1077	1153
3,900	540	777	911	1007	1091	1168
4,000	550	792	927	1025	1111	1189
4,100	559	806	944	1043	1130	1209
4,200	569	819	960	1060	1150	1230
4,300	579	833	976	1078	1169	1251
4,400	589	847	992	1096	1188	1272
4,500	599	861	1008	1114	1208	1292
4,600	608	875	1024	1132	1227	1313
4,700	615	885	1036	1145	1256	1344
4,800	622	895	1048	1158	1256	1344
4,900	629	905	1060	1172	1270	1359
5,000	635	915	1072	1185	1284	1374
5,100	642	926	1085	1199	1300	1391
5,200	650	937	1098	1214	1316	1408
5,300	657	948	1112	1228	1332	1425
5,400	666	960	1126	1224	1349	1443
5,500	675	973	1141	1261	1367	1463
5,600	685	987	1156	1278	1685	1482
5,700	695	1000	1171	1294	1403	1501
5,800	704	1013	1186	1311	1421	1521
5,900	714	1027	1201	1328	1439	1540
6,000	724	1040	1216	1344	1457	1559
6,100	733	1053	1232	1361	1475	1579
6,200	742	1067	1247	1378	1494	1599
6,300	751	1080	1263	1396	1513	1619
6,400	760	1093	1279	1413	1532	1639
6,500	770	1107	1295	1431	1551	1660
6,600	779	1120	1311	1448	1570	1680
6,700	788	1133	1326	1466	1589	1700

6,800	797	1147	1342	1483	1607	1720
6,900	806	1160	1358	1500	1626	1740
7,000	815	1173	1374	1518	1645	1761
7,100	824	1187	1389	1535	1664	1781
7,200	832	1198	1403	1550	1680	1798
7,300	840	1209	1416	1564	1696	1814
7,400	847	1220	1429	1579	1711	1831
7,500	855	1231	1442	1593	1727	1847
7,600	862	1241	1455	1607	1742	1864
7,700	869	1252	1467	1622	1758	1881
7,800	877	1263	1480	1636	1773	1897
7,900	884	1274	1493	1650	1789	1914
8,000	892	1285	1506	1665	1804	1930
If in excess of \$8000 multiply amount by:	11%	16.1%	18.8%	20.8%	22.6%	24%

E. REVIEW OF CHILD SUPPORT SCHEDULE. The Tribe:

1. Shall review and adjust the support schedule periodically:
 - a. In order to ensure that the child support amounts are reasonable and
 - b. Adequately provide for the support of children; and
2. May base such adjustments to the schedule on amounts:
 - a. Listed in the New Mexico "Basic Child Support Guidelines" at N.M.S.A. 1978, § 40-4-11.1 and other state and tribal child support schedules; and
 - b. Recommended by the MATCSEO.

F. GROSS INCOME SHALL INCLUDE:

1. Wages and salaries;
2. Commissions;
3. Revenue from sales of goods and products received in the normal course of business;
4. Deferred compensation;
5. Overtime;
6. Contract-related income;
7. Income from second-jobs (that of non-custodial parent only);
8. Interests;
9. Severance pay;
10. Annuities;

11. Capital gains;
12. Trust income;
13. Oil, gas, and other natural resource royalty payments;
14. Pension retirement benefits;
15. Workers' compensation;
16. Unemployment benefits;
17. Bonuses;
18. Social Security benefits;
19. Disability insurance benefits;
20. Gifts and prizes greater than or equal to \$150 in value.

G. GROSS INCOME SHALL NOT INCLUDE:

1. Income of a new spouse or income of other adults in the household;
2. Child support or spousal support received from other relationships;
3. Gifts and prizes less than \$150;
4. Temporary Aid to Needy Families (TANF);
5. Supplemental security income;
6. General assistance; and
7. Food stamps.
8. Tribal dividend payments.

H. GROSS INCOME DEDUCTIONS:

1. Federal and state income taxes;
2. Federal and tribal insurance contributions deductions, except to the extent that the Court in a specific case reasonably believes that either parent is manipulating the amount of such deductions in order to avoid support of his or her child(ren);
3. Mandatory pension plan payments;
4. Mandatory union or professional dues;
5. State industrial insurance premiums;
6. Court-ordered spousal maintenance to the extent actually paid;
7. Up to \$2000 per year in voluntary pension payments actually made;
8. Normal business expenses and self-employment taxes for self-employed persons.

I. VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT.

1. Where either parent is unemployed or underemployed voluntarily, the Court shall consider the potential earning capacity of the unemployed or underemployed parent. .
2. In determining potential earning capacity, the Court shall consider:
 - a. Prior employment;
 - b. Prevailing wage rates in the region and in the field of work for which the parent

previously worked or is capable of working;

- c. Educational history;
- d. Any physical or mental disability; and
- e. Availability of employment in the region and in the field of work for which the parent is capable.

J. **CUSTODY OR VISITATION SCHEDULE.** The Court may consider the time the child(ren) spends with the non-custodial parent if that period is for a significant period of the year or the parents share joint custody and adjust the amount of child support accordingly.

K. **SEASONAL EMPLOYMENT.**

1. In determining gross income, the Court may consider the seasonal nature of employment so long as there is:
 - a. Evidence of a history of employment in that seasonal employment, and
 - b. No evidence that non-seasonal employment possible for the parent.
2. The Court may use the average gross monthly income of the seasonally employed parent in order to determine a base child support amount.
3. In addition, the Court may order varying amounts per month to be paid in child support to account for the seasonal nature of employment so long as the amount set:
 - a. For off months, is not less than 75% of the base child support amount;
 - b. For on months, is not more than 125% of the base child support amount; and
 - c. The total yearly amount is equal to that which the parent would pay if he or she paid the base child support amount for a year.

L. **OTHERWISE VARIABLE EMPLOYMENT.**

1. Where employment varies in terms of hours worked and rates per hour gross income shall be based upon average gross monthly income over a year or more in order to determine a base child support amount.
2. The Court may order varying amounts of child support depending on periods where it is known that gross income will be greater or lesser so long as the total support paid over a year is equal to support that would have been paid over an entire year at the base child support amount.

3-4-8. CHILD SUPPORT CALCULATION WORKSHEET. A Child Support Calculation Worksheet shall:

- A. Be developed and adopted by the MATCSEO and the Court;
- B. Be used by the MATCSEO in its recommendations to the Court;
- C. Be used to aid and document the Court's calculations;
- D. Note any deviation by the judge from the child support schedule above; and
- E. Accompany all Court orders establishing child support.

3-4-9. NON-CASH SUPPORT.

- A. Non-cash support shall be allowed to satisfy the support obligation only where the Court finds that:

1. Requiring cash support has resulted in non-payment of support; and
2. Non-cash payment would better provide for the needs of the child given:
 - a. The inability of the non-custodial parent to pay cash support,
 - b. The ability of the non-custodial parent to provide non-cash or in-kind support that actually meets a specified need of the child,
 - c. The assent of the custodial parent, or
 - d. The nature of the relationship between the non-custodial and the custodial parent.
- B. Non-cash support shall be:
 1. Valued according to the local fair market value of such non-cash support;
 2. Equal in value to the amount set by the Court for child support; and
 3. In the form of food, clothing, fire wood, and other necessities as the Court determines would be most appropriate in a particular case.
- C. Receipts for the purchase of such items shall be provided to the Court or the MATCSEO as ordered by the Court.

3-4-10. MEDICAL SUPPORT.

- A. The Court may order that the non-custodial parent include the child under his or her medical insurance to satisfy the support obligation.
- B. Such medical support shall satisfy the support obligation to the degree that the non-custodial parent's insurance premium payments are directly related to coverage of the child.
- C. If the payments do not entirely satisfy the support obligation, as calculated herein, the Court shall order the non-custodial parent to satisfy the remainder of the support through payment to the custodial parent.
- D. Proof of payment of such premiums shall be provided to the Court or the MATCSEO as ordered by the Court.

3-4-11. MODIFICATION OF A SUPPORT ORDER.

- A. A Court order establishing the amount or payment schedule may be modified where:
 1. A petition for modification has been properly filed by the non-custodial or the custodial parent; and
 2. Such petition is accompanied by an affidavit that the respective parent has filed the petition pursuant to a reasonable belief that modification is necessary.
- B. The Court shall issue an order modifying the original order where the Court finds:
 1. Since the original order was issued, the monthly gross income of either parent has increased or decreased by more than 15% of the gross monthly income used to calculate the original base child support amount;
 2. Neither parent will suffer substantial hardship by such increase or decrease; and
 3. The best interests of the child will not be affected negatively by such increase or decrease.
- C. The Court shall apply the child support calculations provided herein in determining the amount of modification.

- D. Any modification of the amount of support or payment schedule cannot be modified to an amount less than 85% of the amount in the existing order.
- E. Modification shall not occur within one (1) year of the original order or any previous modification order unless the Court finds substantial hardship or injustice to the child or respective parent would result otherwise.
- F. Modification of a child support order shall not affect the amount owed for back payments.
- G. All child support orders by the Court shall be reviewed and modified, as provided herein, automatically every three (3) years.

3-4-12. AGREEMENT FOR SUPPORT.

- A. The non-custodial parent, the custodial parent, or the child where allowed to initiate an action as provided herein or the MATCSEO or a lay advocate on the child's behalf, may initiate negotiations to create an agreement governing the amount, the payment schedule, the means of payment, and any other relevant details.
- B. The Court may order the non-custodial parent and the custodial parent to negotiate an agreement concerning support where the Court determines that:
 - 1. The non-custodial parent is more likely to make payments after negotiating an agreement; and
 - 2. The relationship between the non-custodial parent and the custodial parent is such that negotiation and the resulting agreement would be in the interests of the child(ren) involved, safe and fair to both parents, and more efficient than continued Court proceedings.
- C. An agreement, concerning the support of the child, shall be binding upon the custodial parent and the child provided that:
 - 1. The agreement is in writing and signed by both parties; and
 - 2. The Court or a court of competent jurisdiction:
 - a. Finds that the agreement adequately provides for the support of the child;
 - b. Determines that neither parent was coerced into entering such agreement; and
 - c. Acknowledges such agreement with an order stating the terms of the agreement and its approval thereof.
- D. Modification of an agreement concerning support shall be as provided at § 3-4-11.

3-4-13. PAYMENT WHERE MULTIPLE ORDERS WITH MULTIPLE CUSTODIAL PARENTS.

Where the Court has issued more than one order requiring that a single non-custodial parent provide for his or her multiple children with more than one custodial parent is involved the Court shall order that the non-custodial parent make support payments to the MATCSEO which shall:

- A. Apportion the payments as required by the multiple orders; or
- B. Where the payments by the non-custodial parent are insufficient to pay each amount in full, apportion the payments equally among each child for which there is an order;
- C. Unless, the Court finds reason to provide for another means of apportionment or each parent involved consents to another means of apportionment in writing, then payment shall be made in accordance with such means.

3-4-14. ACTION TO COMPEL SUPPORT WHERE NON-PAYMENT.

- A. If a Court order establishing child support exists, an action may be brought by the custodial parent of the child, where allowed herein, to recover from the non-custodial parent the amount of that support which has not yet been paid except as provided herein.
- B. The custodial parent may not bring any action against the non-custodial parent where the non-custodial parent has complied with the Court order or an agreement for support except where the action is to modify the order or agreement as provided at § 3-4-12.

3-4-15. PAYMENT IN EXCESS OF SUPPORT OBLIGATION. Where the non-custodial parent inadvertently or mistakenly pays more support than he or she is obligated to pay as determined herein, he or she may request that the Court order:

- A. Such excess amount to be applied pro rata to future payments such that the child continuously receives support though at an amount less than originally ordered until the excess amount paid is accounted for; or
- B. The custodial parent to reimburse the non-custodial parent for the excess amount;
- C. Provided that, the non-custodial parent:
 - 1. Makes such request within a reasonable period after discovering excess payment, and
 - 2. Provides adequate proof of the excess payment; and
- D. The custodial parent shall have the opportunity to provide proof that there has not been excess payment.

3-4-16. SUBPOENA OF FINANCIAL DOCUMENTS AND OTHER INFORMATION.

- A. The Court shall have the power to issue subpoenas for financial documents and information from either parent, pursuant to § 2-5-8, in order to establish the amount of support.
- B. In addition, the Court shall have the authority to order that the noncustodial parent provide necessary information to the custodial parent when applying for Medicaid and other government social service coverage of their child(ren).

3-4-17. REVIEW AND MODIFICATION OF CHILD SUPPORT GUIDELINES AND RELATED POLICIES AND PROCEDURES. The Tribe shall:

- A. Review and modify as necessary, the child support guidelines and all related policies and procedures a minimum of once every four (4) years;
- B. Upon review, consider:
 - 1. The efficiency of using the schedule in setting child support amounts and the effectiveness of enforcement measures; and
 - 2. Economic and social changes that might affect ability to pay or the cost of meeting the care and maintenance needs of the average child in the Tribal community.

SECTION 5. WAGE WITHHOLDING AND WITHHOLDING OF TRIBAL PER CAPITA PAYMENTS.

3-5-1. WAGE WITHHOLDING AUTOMATIC. The MATCSEO shall initiate proceedings with the Tribe or other employer to implement wage withholding automatically when a Court order establishing the support obligation is issued, unless:

- A. The parties have agreed otherwise, provided that, any agreement providing for an alternative to automatic wage withholding shall be:
 - 1. In writing,

2. Presented to the Court, and
 3. Approved of by the Court through a Court order authorizing enforcement thereof; or
- B. Either the custodial or the non-custodial parent demonstrates and the Court finds good cause not to require automatic withholding.

3-5-2. RESTRICTIONS ON TRIBAL WAGE WITHHOLDING. Wage withholding of Tribal employee wages shall comply with federal law and the following restrictions:

- A. Notice must be provided to the Tribal Accounting Office using standard federal or state income withholding forms and a Court order;
- B. The amount withheld must include an amount to be applied toward any arrearages in addition to any current support;
- C. Wages withheld:
 1. Cannot exceed 50% of the noncustodial parent's disposable earnings where the parent is supporting a spouse or child; or
 2. Cannot exceed 60% of the noncustodial parent's disposable earnings where the parent is not supporting a spouse or other child(ren).
 3. If a noncustodial parent is more than three (3) months in arrears, an additional 5% of the parent's disposable earnings may be withheld.
- D. The Court shall ensure that the procedural due process rights established in Chapter 2 and herein, are honored in actions to order wage withholding;
- E. The Tribal Accounting Office shall transfer withheld amounts to the MATCSEO which shall distribute such withheld amounts;
- F. The MATCSEO shall promptly refund amounts wrongfully withheld and if the amount wrongfully withheld has already been distributed to the custodial parent, the MATCSEO shall proceed as provided herein;
- G. Wage withholding must terminate where there is no longer a current support order and all arrearages have been satisfied;
- H. Where immediate income withholding is not in place, the income of non-custodial parent shall become subject to withholding, at the earliest, on the date payment which the non-custodial parent has failed to make under a Tribal support order-are at least equal to support payable for one month; and
- I. The only basis for the contesting of wage withholding order shall be mistake of fact or error in amount of current or overdue support or identity of alleged non-custodial parent.

3-5-3. LIABILITY OF EMPLOYER.

- A. If the non-custodial parent's employer fails to withhold as ordered, the employer shall be liable for the amount that should have been withheld.
- B. The noncustodial parent's employer shall be subject to a fine of five hundred dollars (\$500.00) for discharging, refusing to employ, or taking disciplinary action against an employee as a result of the issuance of a withholding order.

3-5-4. WITHHOLDING OF TRIBAL DIVIDEND PAYMENTS. In the event that the non-custodial parent owes more than one thousand five hundred dollars (\$1,500) in child support, the custodial parent may request a Court order withholding no more than one half (1/2) of the non-custodial parent's Tribal

dividend payments. Such order shall remain in effect until the non-custodial parent no longer owes back child support.

SECTION 6. PENALTIES FOR NON-PAYMENT OF CHILD SUPPORT.

3-6-1. PREFERENCE FOR NON-INCARCERATION PENALTIES.

- A. The Tribe believes that child support enforcement is most effective when it encourages and allows for the employment of non-custodial parents.
- B. Incarceration does not allow non-custodial parents to seek or be employed.
- C. Therefore, the Court shall seek to enforce child support orders through any of the methods provided herein before resorting to the imposition of the penalty of incarceration.

3-6-2. CIVIL CONTEMPT POWER. Where a non-custodial parent has failed to pay child support, he or she may be held in contempt of Court for his or her failure or refusal to comply with the order to pay child support.

3-6-3. ENJOINING TRANSFER OF PROPERTY AND LIEN ON PROPERTY.

- A. Upon the filing of a petition to enforce a support order where there has been non-payment of child support, the Court may issue orders enjoining the non-custodial parent from transferring or disposing of his or her property.
- B. An order finding that a non-custodial parent shall pay child support, when rendered, shall be a lien on all property, real or personal, of the non-custodial parent, and in other respects be enforceable the same as other judgments.

3-6-4. PERMITS, REGISTRATION, LICENSING, AND INCOME TAX REFUNDS.

- A. Upon the filing of a petition to compel support, the Court may issue an order barring the non-custodial parent from receiving:
 - 1. A Tribal hunting and/or wood cutting permit;
 - 2. Tribal registration as a hunting guide for hunts occurring within the exterior boundaries of the Reservation; and
- B. In addition, the Court may order the MATCSEO to initiate proceedings, in accordance with applicable state or federal regulations, to cause:
 - 1. The state driver's license of the non-custodial parent to be revoked; and/or
 - 2. Any state or federal income tax refund of a non-custodial parent to be intercepted to satisfy the support obligation.
 - 3. Any license to be denied, revoked or not renewed.
 - 4. Denial of a passport in accordance with current federal and state regulations.
- C. Orders made pursuant to this Section shall terminate explicitly when the non-custodial parent has made all back payments and any current support.

3-6-5. INCARCERATION AND FINE. The failure of a non-custodial parent to comply with a child support order by non-payment, where the Court has previously imposed other penalties and non-payment continues, may be punishable by:

- A. A fine not exceeding three hundred sixty dollars (\$360.00),
- B. Incarceration for a term not to exceed six (6) months, or
- C. Both such fine and incarceration.

SECTION 7. CHILD SUPPORT AND AN AGENCY VESTED WITH CARE, CONTROL, AND SUPERVISION OR LEGAL CUSTODY.

3-7-1. SUPPORT OWED BY PARENTS.

- A. At a proceeding where the Children's Court is considering whether the care, control, and Supervision or legal custody of a child may be vested in an individual or agency other than his or her parents as provided at § 11-10-10 and 11-10-11 of the Tribal Code, the Court may inquire into the ability of the parent(s) or guardian to pay any expenses of the child, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the Children's Court.
- B. The Children's Court may, after due notice and a hearing on the matter, require the parent(s) or guardian to pay the whole or part of such support and expenses, depending on his or her available financial resources and other considerations.
- C. The amounts so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the Clerk of the Children's Court for transmission to the person or agency having legal custody of the child, or to whom compensation is due.

3-7-2. OTHER PAYMENTS MADE TOWARDS THE CARE AND MAINTENANCE OF A CHILD.

The Clerk of the Court shall have authority to receive periodic payments towards the care and maintenance of the child, such as Social Security payments made in the name of or for the benefit of the child.

3-7-3. PROCEDURE FOR PAYMENTS TO AN AGENCY.

- A. No Court under issued under the preceding Section against a parent(s) or guardian shall be entered unless summons has been served on the Reservation or a voluntary appearance is made or a waiver of service given.
- B. The summons shall specify that a hearing with respect to the support of the child will be held.

3-7-4. ENFORCEMENT OF ORDERS TO PAY AGENCY. An order entered under this Section may be enforced in the same manner as any other order for support.

3-7-5. PAYMENTS TO AND DUTIES OF THE AGENCY.

- A. Where payment for child support has been ordered to be made to an agency, the agency shall make periodic reports to the Court concerning the expenditure of such payments toward the care and maintenance of the child in addition to any other reports required by the Children's Court at Chapter 11.
- B. Such reports shall be made at such intervals as the Children's Court may direct, and shall be made with respect to each child at least every six (6) months.
- C. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

SECTION 8. MESCALERO APACHE TRIBAL CHILD SUPPORT ENFORCEMENT OFFICE.

3-8-1. ESTABLISHMENT OF THE MESCALERO APACHE TRIBAL CHILD SUPPORT ENFORCEMENT OFFICE. There shall be created an agency of the Tribe to be called the Mescalero Apache Tribal Child Support Enforcement Office (MATCSEO), which shall:

- A. Operate the child support enforcement program for the Tribe, in compliance with this Chapter and applicable federal law; and

- B. Be under the supervision of the Tribal President or the President's designee.

3-8-2. DIRECTOR. The MATCSEO shall be operated by a Director who shall:

- A. Oversee financial and management issues;
- B. Make preliminary decisions as to applicant eligibility, which shall become final if not appealed;
- C. Provide guidance to personnel and the Tribal Court in regard to federal requirements and Tribal or state child support ordinances; and
- D. Otherwise oversee the operation of the MATCSEO.

3-8-3. CHILD SUPPORT ADVOCATE. The MATCSEO shall be represented before the Court by the Child Support Advocate. Specifically, the Child Support Advocate shall:

- A. Conduct pre-proceeding gathering of information necessary, including but not limited to consulting with both parents and other MATCSEO personnel;
- B. Present evidence of gross income and MATCSEO calculations to the Court for consideration; and
- C. Aid the Court by completing legal research and preparing Court documents.

3-8-4. OTHER PERSONNEL. All other personnel shall be hired as necessary to ensure the effective and efficient operation of the MATCSEO, as recommended by the Director.

3-8-5. DUTIES AND SERVICES OF THE MATCSEO. The MATCSEO shall:

- A. Provide basic information to the Tribal community in regard to the establishment of parentage and child support and services provided;
- B. Accept applications for MATCSEO services and determine eligibility of applicants pursuant to §§ 3-8-9 through 3-8-10;
- C. Aid applicants in establishing parentage, provided that the MATCSEO shall not attempt to establish paternity in the case of incest, forcible rape, or where legal proceedings for adoption are pending, if the MATCSEO determines that it is not in the best interests of child to do so;
- D. Aid applicants in establishing or enforcing child support orders;
- E. Provide applicants with or refer such applicants to agencies with information regarding employment;
- F. Perform the following intergovernmental functions:
 - 1. Receive requests from other tribal and state jurisdictions for MATCSEO services;
 - 2. Appear before the Court to request an order recognizing the state or tribal jurisdiction's order;
 - 3. Appeal to other state or tribal agencies and courts to enforce child support orders where the Court does not have the authority to enforce such orders directly; and
 - 4. Negotiate with and present to the Council, for adoption, agreements with other state and tribal agencies setting forth intergovernmental procedures that would ease intergovernmental relations and effective child support enforcement;
- G. Locate non-custodial parents and their sources of income;
- H. Keep a record of payments made or amounts delinquent, and provide individuals receiving services with this record at least once yearly and upon request;
- I. Maintain any and all records as necessary for proper and efficient operation of the MATCSEO

and as required by federal law;

- J. Refer applicants inquiring into child custody, visitation, domestic violence, child abuse and neglect, or property and spousal support to the Court or appropriate social services agencies; and
- K. Perform such other duties as required by this Chapter.

3-8-6. LIMITATION ON SERVICES. Matters related to the following shall not be within the duties and services of the MATCSEO:

- A. Child custody or visitation,
- B. Property division and spousal support, and
- C. Domestic violence and child abuse and neglect.

3-8-7. APPLICATION FOR SERVICE. The MATCSEO shall promulgate and make available forms which individual applicants must complete and submit in order to receive MATCSEO services.

3-8-8. NO APPLICATION FEE. The MATCSEO shall not charge or collect any application fee from any applicant, including state or tribal courts or agencies, for services.

3-8-9. APPLICATION FOR INTERGOVERNMENTAL SERVICE. The MATCSEO shall promulgate and make available an Application for Intergovernmental Service, which shall accompany a copy of the order to be recognized and enforced, and state:

- A. The name, address and location of any property of the non-custodial parent and any other pertinent information, if known;
- B. The name and address, for the purposes of receiving support payments, of the custodial parent; and
- C. A statement signed by the custodial parent detailing the amount to be paid each month, week, or year and the amount of back payments due.

3-8-10. ACCEPTANCE, DISTRIBUTION AND RETENTION OF SUPPORT PAYMENTS.

- A. Where automatic wage withholding has not been implemented pursuant to Section 5 of this Code, the Court shall order that any and all payments made by a non-custodial parent be paid directly to Tribal Accounting for distribution to the custodial parent, unless both parents have agreed otherwise in writing and in accordance with § 3-5-1 (A).
- B. Tribal Accounting, in consultation with the MATCSEO, shall promulgate procedures for accepting, distributing and retaining all support payments collected. Such procedures shall ensure that information relating to the receipt and amount of child support payments received by Tribal Accounting is relayed to MATCSEO in order for MATCSEO to track such payments and seek arrearages as allowed by this Chapter. Such procedures shall comply with federal law and provide for the safe and efficient handling of support payments

3-8-11. MEDIATION AND AGREEMENT BETWEEN PARENTS. The MATCSEO shall encourage and lead mediation to formulate a written agreement between the custodial and noncustodial parents regarding child support payments as allowed at § 3-4-9, provided:

- A. Any mediation led by the MATCSEO shall ensure the safety of both parents and the child; and
- B. The MATCSEO shall ensure that any agreement reached is fair to both parents and adequately provides for the care and maintenance of the child(ren).

3-8-12. PRIVACY SAFEGUARDS. The MATCSEO shall promulgate internal rules:

- A. Governing the release of personal information,

- B. Governing the imposition of internal sanctions for the unauthorized use or disclosure of personal information by MATCSEO personnel.

3-8-13. DUTY TO REPORT CHILD ABUSE AND NEGLECT. Notwithstanding the limited services provided by the MATCSEO, all MATCSEO employees are specifically required to report any reasonable suspicion of child abuse and neglect as required and in accordance with the procedures provided at § 11-9-2.

3-8-14. LOCATION AND AVAILABILITY. The MATCSEO shall be located near the Tribal Administrative Offices and shall have business hours and holidays which correspond with that of the Tribe.

3-8-15. AUTOMATIC REFERRAL TO THE MATCSEO FROM THE TRIBAL COURT. Where an individual authorized by § 3-9-4 to bring an action applies directly to the Court for the establishment of parentage and/or child support or the enforcement of an existing child support order, the Court shall automatically refer such individual to the MATCSEO.

3-8-16. TRANSFER OF EXISTING CASES TO THE MATCSEO. The Tribal Court and the Office of the Tribal Prosecutor shall transfer any and all existing cases involving parentage and/or child support to the MATCSEO.

SECTION 9. MISCELLANEOUS PARENTAGE AND CHILD SUPPORT PROVISIONS.

3-9-1. CONTINUING JURISDICTION OF COURT AND TERMINATION OF AN ORDER.

- A. The Court shall have continuing jurisdiction over proceedings to establish parentage until:
 - 1. An order declaring that the alleged parent is not the parent is issued; or
 - 2. An order compelling support terminates.
- B. The Court shall have continuing jurisdiction over proceedings to establish and compel support until the order terminates.
- C. An order compelling support shall terminate when all payments, required by the Court to be paid at certain intervals and amounts and accumulating until the child(ren) reaches the age of eighteen (18), are paid in full.

3-9-2. TRANSFER OF PROCEEDINGS.

- A. At any time during proceedings to establish parentage and/or compel support, either parent may request that the Court transfer proceedings to another court of competent jurisdiction.
- B. Where the complainant or custodial parent makes such request, the Court shall consider:
 - 1. The location of the child(ren) whose parentage thereof or support is at issue; and
 - 2. The fairness to both parties of such transfer.
- C. Where the alleged or non-custodial parent makes such request, the Court shall consider whether:
 - 1. The exercise of Court jurisdiction would be unjust due to the location of the alleged or non-custodial parent;
 - 2. Transfer would more likely lead to the payment of support; and
 - 3. Circumstances indicate that the alleged or non-custodial parent has made such request in order to avoid the establishment of parentage or enforcement of support.

3-9-3. PROCEEDINGS NOT EXCLUSIVE. Proceedings to establish parentage of the child and/or compel support shall not be exclusive of other proceedings or actions that may be available in other courts with competent jurisdiction.

3-9-4. PROCEEDINGS TO ESTABLISH PARENTAGE AND COMPEL SUPPORT, WHO MAY BRING, AND CONTINUATION OF PROCEEDINGS WHERE PARENT IS ABSENT.

- A. Proceedings to establish parentage and/or compel support may be brought by:
 - 1. A parent,
 - 2. Guardian,
 - 3. Advocate for the child appointed by the Court, or
 - 4. An agency vested with care, control, or supervision or legal custody.
- B. After death of the complainant or custodial parent or in the case of his or her disability, proceedings to establish parentage or compel support may be continued with the child named as the complainant party through his or her guardian, advocate for the child, or an agency.
- C. If the proceedings are brought by a guardian, an advocate for the child, or an agency, the parents shall be made the alleged parents or non-custodial parents.

3-9-5. FORM OF PETITION. The petition to establish parentage and/or compel support shall:

- A. Identify the alleged or non-custodial parent as being the parent of the child,
- B. Demand that the alleged or non-custodial parent be compelled to establish parentage and/or pay support and
- C. Contain such facts relating to the:
 - 1. Location of the alleged or non-custodial parent, where the parent is absent;
 - 2. Income and property of the non-custodial parent, in the case of a petition to compel support; and
 - 3. Any other relevant circumstances within the knowledge of the complainant or custodial parent.

3-9-6. TESTIMONY BY PARENT.

- A. Both parents shall be competent, but not compelled, to give testimony in any proceedings to establish parentage and/or compel support.
- B. If either parent testifies, he or she shall be subject to cross-examination by the other party and/or the Court.

3-9-7. FAILURE OF PARENT TO APPEAR, TRIAL TO PROCEED. If the alleged or non-custodial parent fails to appear, the Court shall proceed as if he or she were present; and the Court shall make such orders as if the parent were in Court.

3-9-8. DEATH OF PARENT, TRIAL TO PROCEED, AND DECLARATION MADE IN CONTEMPLATION OF DEATH.

- A. The death of the complainant or custodial parent, after filing of a petition, shall not prevent proceedings from continuing; but the child, his or her guardian, an advocate for the child, or an agency, shall be substituted for the complainant or custodial parent in any subsequent proceedings.
- B. If the complainant or custodial parent is absent and cannot be found at the time of the trial, the case shall proceed as if he or she were dead.
- C. In all cases where either parent is dead at the time of any proceedings, his or her declaration made in contemplation of death, and accurately preserved, may be read into evidence.

3-9-9. DEFAULT JUDGMENTS, PARENTAGE, AND CHILD SUPPORT.

- A. Where the alleged or the non-custodial parent fails to appear at Court proceedings after receipt of summons and notice without providing reasonable excuse and the Court is forced to enter a default judgment establishing parentage or the duty of support, the Court shall serve notice of such default judgment personally on the alleged or the non-custodial parent.
- B. Such notice shall state the right of the respective parent to appeal the decision as provided herein and be provided within forty-five (45) days after the issuance of such judgment.

3-9-10. ACTIONS INITIATED BY THE COURT OR THE MATCSEO.

- A. The Court or MATCSEO shall have the authority to initiate a proceeding to establish parentage or the duty of support where the Court or MATCSEO has reasonable basis to believe:
 - 1. A child(ren) within the jurisdiction of the Court is in need of support; and
 - 2. The custodial parent is unwilling or unable to initiate such proceedings.
- A. Notice of such proceedings shall be provided to the custodial and non-custodial parent.
- B. Proceedings under this Section shall be conducted as provided herein.

3-9-11. SUMMONS AND PROCEDURE CIVIL IN NATURE. Unless otherwise provided herein, summons shall be issued and served and proceedings to establish parentage and/or child support shall be conducted in the same manner as other civil proceedings, as provided in Chapter 2 of the Code.

3-9-12. LIMITATION OF ACTIONS.

- A. An action against an alleged parent to establish parentage and/or against a non-custodial parent to establish or enforce a child support order shall not be brought by the complainant or custodial parent after the child reaches the age of eighteen (18).
- B. However, at any time after the age of eighteen (18), the child, on his or her own behalf,
 - 1. May initiate an action under this Chapter to establish parentage and support payments or enforce an existing order for non-payment; and
 - 2. In the case of an action to establish or enforce child support, receive any resulting payment that the custodial parent would have received.
- C. Otherwise, the complainant or custodial parent may initiate an action to establish parentage and/or establish or enforce a child support order at any time.
- D. Specifically, proceedings to establish parentage and/or compel support may be initiated during the pregnancy of the mother or after birth of a child.
- E. However, the consent of the alleged parent shall be required before any proceedings before the birth of a child commence.

3-9-13. APPLICABILITY.

- A. This Chapter shall apply to all proceedings relating to the establishment of parentage and duty to pay and amount of child support, whether part of a divorce, child welfare, or other proceeding, except where otherwise provided.
- B. This Chapter does not apply to custody, domestic or child abuse and neglect, and other child welfare or juvenile justice matters. Such matters shall be governed by Chapter 11 of the Code.

3-9-14. CHILDREN'S COURT, PARENTAGE, AND CHILD SUPPORT.

- A. The Children's Court established under Chapter 11 of this Code shall have the authority to

establish parentage and the duty and amount of support, as provided in this Chapter, where the Children's Court has jurisdiction over a child as provided at § 11-2-1 and as allowed herein.

- B. The Children's Court shall be bound by the policies and procedures provided in this Chapter, except where the Children's Court finds that such compliance is not in the best interests of the child(ren) involved.

3-9-15. TRIBAL MEMBERSHIP AND PROCEEDINGS HEREUNDER. This Chapter shall not apply to matters dealing with Tribal membership. Such matters shall comply with the Constitution of the Tribe at Art IV.

3-9-16. ENFORCEMENT OF COURT ORDERS IN STATE AND TRIBAL COURTS.

- A. Where the Court finds that the non-custodial parent is no longer within the Court's jurisdiction, the Court shall submit the order to the MATCSEO.
- B. The MATCSEO shall:
 - 1. Follow the procedures established by states and tribes for the recognition of orders from outside those jurisdictions, including working with other child support enforcement agencies;
 - 2. Otherwise act to ensure that the orders of the Court are enforced in state and tribal courts.

3-9-17. FULL FAITH AND CREDIT, ENFORCEMENT OF THE ORDERS OF OTHER COURTS, AND MODIFICATION OF SUCH ORDERS.

- A. The Tribe recognizes and promises to give effect to the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. 1738 (B), which provides that the Court shall recognize the orders in a proceeding to establish parentage, establishing parentage, or duty of support of other jurisdictions where:
 - 1. Those orders were issued pursuant to the laws of a state or tribe that had competent jurisdiction, and
 - 2. Those jurisdictions have appealed to the Court to issue an order enforcing that foreign order by completing and submitting to the MATCSEO an Application for Intergovernmental Service as provided at § 3-8-10.
- B. Where the state or tribe presents sufficient evidence that both (1) and (2) above have been met:
 - 1. The MATCSEO shall present the order to the Court; and
 - 2. The Court shall recognize such orders by issuing a Court order noting such recognition;
 - 3. Then, the MATCSEO shall seek to use all remedies available through the Court to enforce such order.
- C. The Court shall not modify the orders of another state or tribe unless:
 - 1. The Court has jurisdiction to make a child support order and the child is no longer a resident of the state or tribal jurisdiction which originally issued the order; or
 - 2. Both the custodial and non-custodial parent filed written consent to such modification with the Court and the state or tribal court.
- D. The MATCSEO shall keep a registry of orders from other states and tribes and the Court orders recognizing such orders.

3-9-18. CONFIDENTIALITY OF PERSONAL INFORMATION RELATING TO PARENTAGE AND CHILD SUPPORT PROCEEDINGS.

- A. In order to provide for the fullest cooperation of each parent and the safety of the parents and all children, all Tribal employees who come into possession of personal information relating to any party involved in a proceeding to establish parentage and/or child support and/or enforcement thereof, shall be sanctioned for misuse of such information.
- B. Misuse of personal information occurs where information is used in a way that is not directly related to the establishment of parentage and/or child support and/or enforcement thereof.
- C. Sanctions for misuse of information may include termination.
- D. However, any Tribal employee sanctioned for misuse of information may utilize those procedures provided in the Mescalero Apache Tribe, Personnel Policies and Procedures at Sec. XI, "Employee Grievances" to appeal the determination of misuse and/or the nature of the sanction.

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CHAPTER 4

ADOPTION

SECTION 1. ADOPTION OF INDIVIDUALS

4-1-1. WHO MAY BE ADOPTED. Any person who is a member of the Mescalero Apache Tribe and is brought in person before the Mescalero Apache Tribal Court may be adopted, irrespective of place of birth or place of residence.

4-1-2. WHO MAY AND MAY NOT ADOPT.

- A. The following persons are eligible to adopt a child under the age of eighteen (18) years:
 - 1. A husband and wife jointly, or either the husband or wife, if the other spouse is a parent of the child to be adopted;
 - 2. An unmarried person who is at least eighteen (18) years of age;
 - 3. A married person at least eighteen (18) years of age who is legally separated from his or her spouse;
 - 4. In the case of a child whose parents are not married, its unmarried father.
- B. It is the custom and policy of the Mescalero Apache Tribe that no non-enrolled member may adopt an enrolled, or eligible to be enrolled, member of the Mescalero Apache Tribe. The Tribal Court is prohibited from accepting any Petition where a Non-Tribal member seeks to adopt an enrolled tribal member without prior written approval of the Tribal Council.

4-1-3. PERSONS REQUIRED TO CONSENT TO ADOPTION:

- A. An adoption of a child may be ordered when there has been filed written Consents to Adoption executed by both parents, if living, or surviving parent, if one is dead.
- B. The Consents required by paragraph A above shall be signed in the presence of a Judge of the Tribal Court, the Clerk of the Tribal Court, or acknowledged before a notary public.
- C. Minority of parents or either one of them shall not be a bar to the right of consent, nor shall it invalidate such consent, provided such consent is joined by the parents or legal guardian of the minor parent.

4-1-4. WITHDRAWAL OF CONSENT. A Consent to Adoption may not be withdrawn except by permission of the Tribal Court given before entry of final Judgment in the adoption proceedings.

4-1-5. ADOPTION WITHOUT PARENTS' CONSENT. The Mescalero Apache Tribal Court shall have the authority to approve adoptions without a parent's consent where:

- A. The parent is dead; or,
- B. The Court finds after notice and hearing, that the parent has abandoned the child for more than one (1) year; or,
- C. The Court finds, after notice and hearing, that the parent is unfit to have the custody of said child or children.

4-1-6. CONSENT OF THE CHILD. Consent of the child, if fourteen (14) years of age or over, shall be required for adoption; such consent shall be in writing and shall be signed in the presence of one (1) of the judges or the Clerk of the Mescalero Apache Tribal Court.

4-1-7. PETITION OF ADOPTION.

- A. A Petition for adoption shall be in duplicate bearing the names and addresses of both the natural and adoptive parents, name of each child to be adopted, ages of all persons, relationship to the child, if any, place where child presently is in custody, and reasons for seeking to adopt the child.
- B. One copy of the Petition shall be retained by the Mescalero Apache Tribal Court, and the other copy of the Petition shall be sent to the Branch of Social Services of the Mescalero Indian Agency, by the Clerk of the Mescalero Apache Tribal Court.
- C. Any written Consent required by these regulations must be attached to both copies of the Petition.
- D. Upon the filing of a Petition, the Mescalero Apache Tribal Court shall order a date set for hearing which shall be not later than ninety (90) days from the date of the filing of the Petition.

4-1-8. INVESTIGATION.

- A. Upon filing of a Petition for adoption, the Mescalero Apache Tribal Court shall request the social worker of the Branch of Social Services of the Mescalero Indian Agency with the technical assistance of the state of New Mexico and other government branches of Social Services to make an investigation. Such investigation shall include the history of the child, appropriate inquiry to determine whether the proposed home is a suitable one for the child, and any other circumstances and conditions which may have a bearing on the adoption or custody of the subject child, pertinent to the pending Petition for adoption. A written report of this investigation shall be returned to the Tribal Court.
- B. The report of the social worker of the Branch of Social Services of the Mescalero Indian Agency shall be a part of the file in the case and shall contain a definite recommendation for or against the proposed adoption and shall clearly set forth the reasons for such recommendation.

4-1-9. TEMPORARY ORDER, FINAL JUDGMENT.

- A. Upon examination of the report required by § 4-1-8 of this Code, and after such hearing or hearings, as may be required by the Court, the Mescalero Apache Tribal Court may issue a Temporary Order granting the care and custody of the minor child to the petitioner, or to any suitable person or persons, pending further hearings and Orders of the Court; provided, that if the child is a close blood relative to one of the petitioners, or is a step-child of the petitioner, or has been living in the home of the petitioner for more than one (1) year preceding the date of filing the Petition for Adoption, the Mescalero Apache Tribal Court may waive the entry of Temporary Order and immediately enter a Final Judgment of Adoption. Where a Temporary Order is entered, the social worker of the Branch of Social Services of the Mescalero Indian Agency shall be instructed to observe the child in the foster home and report to the Mescalero Apache Tribal Court within six (6) months after the entry of such Order concerning any circumstances or conditions which may have a bearing on the child's adoption or custody.
- B. Upon application by the petitioner or upon the Court's own Motion, six (6) months after the date of the entry of the Temporary Order, or upon the Court's own Motion, at any time prior thereto, the Court may set a time and place for additional hearings. Notice of the time and place of the hearing shall be served on the social worker of the Branch of Social Services of the Mescalero Indian Agency. The Branch of Social Services of the Mescalero Indian Agency may file with the Court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the Temporary Order. After such hearing, the Court may enter a Final Judgment of Adoption, if satisfied that the adoption is in the best interests of the child, or may make such other Orders as it sees fit.

4-1-10. EFFECT OF FINAL JUDGMENT.

- A. After the Final Judgment of Adoption is entered, the relations of parent and child, and the rights, duties, and other legal effects of the natural relationship of child and parent shall thereafter exist

between the child and the adoptive parent.

- B. After the Final Judgment of Adoption is entered, the adopted child shall be known by the name of his adoptive parents, unless he or she is over the age of fourteen (14) years and requests to retain his or her natural name.
- C. The status of the child as a member of the Mescalero Apache Tribe shall not be affected by any adoption, and such child shall not forfeit his or her rights to inherit from his or her natural parents by descent or distribution, or otherwise.
- D. After the Final Decree of Adoption, the natural parents of the adoptive child shall be relieved of all parental responsibility for said child and shall have no rights over said child, or to his property by descent or distribution, or otherwise.

4-1-11. CONFIDENTIAL NATURE OF RECORD AND PROCEEDINGS. Unless the Mescalero Apache Tribal Court shall order otherwise, all hearings held in proceedings under this chapter shall be confidential and shall be held by the Court sitting in closed session and without any person other than interested parties and witnesses being admitted thereto. Further, all papers, records, or files pertaining to proceedings under this chapter, except the Final Judgment of Adoption, kept by the Court, or by the Branch of Social Services of the Mescalero Indian Agency, or otherwise by this Court, shall be confidential and withheld from inspection except upon Order of the Mescalero Apache Tribal Court after good cause having been shown.

4-1-12. REGISTRATION OF FINAL JUDGMENT OF ADOPTION.

- A. Upon entry of the Final Judgment of Adoption, the Clerk of the Mescalero Apache Tribal Court shall forward a copy of said Judgment to the Tribal Census Clerk for its records.
- B. The Order of the Mescalero Apache Tribal Court will direct the Census Office at the Tribal Office to so amend family listings, and other records to properly show the Final Judgment of Adoption entered by the Mescalero Apache Tribal Court. These amended records which contain the names and addresses or other information concerning the adopted child and the adopting parents cease to be available for public inspection. Only those persons obtaining permission of the Tribal Court shall be given access to said records. No such permission shall be given unless the best interests of the child will be served thereby. The intent of this paragraph is that any information concerning the whereabouts of the adopting parents and the adopted child will not be available to the natural parent or parents, or other unauthorized persons, after Final Judgment of Adoption is decreed by the Mescalero Apache Tribal Court.

4-1-13. ADOPTION OF ADULTS. An adult person may be adopted by any other adult person with the written Consent of the person to adopted, joined by the written Consent of his guardian, if any, and with the written Consent of his spouse, if any. The spouse, if any, of the adopting parent shall also signify consent in writing. The Petition seeking such adoption, together with all necessary Consents, shall be filed in the Tribal Court and a hearing held thereon. The provisions of § 4-1-2 through § 4-1-9 of this Code shall not apply to the adoption of an adult person.

4-1-14. APPEAL. Any person appearing in any adoption proceeding before the Mescalero Apache Tribal Court, including, but not limited to:

- A. any petitioner;
- B. the adoptive child, if fourteen (14) years of age or over;
- C. any blood relative over the age of sixteen (16) years of any adoptive child; or,
- D. any other person who has cared for, maintained, or supported the adoptive child; may appeal the decision of the Mescalero Apache Tribal Court, in the same manner and according to the same procedure as any other decision of said Court. For all purposes of appeal under this Section, the

Mescalero Tribal Council sitting in regular or special session, shall act as an Appellate Court.

SECTION 2. ENROLLMENT IN THE MESCALERO APACHE TRIBE.

4-2-1. QUALIFICATIONS. Any person seeking to be enrolled as a member of the Mescalero Apache Tribe must provide proof of one-fourth (1/4th) degree or more Mescalero Apache blood.

4-2-2. RESIDENCE. Any person born to a non-resident member before January 12, 1965, requesting enrollment in the Mescalero Apache Tribe must have resided on the Mescalero Apache Reservation for not less than one (1) year immediately preceding enrollment.

4-2-3. DEGREE OF BLOOD. Any person of one-fourth (1/4th) or more degree of Mescalero Apache blood born after January 12, 1965, requesting enrollment in the Mescalero Apache Tribe must have at least one (1) parent who is an enrolled member of the Mescalero Apache Tribe.

The requirement of one-fourth (1/4) degree or more Mescalero Apache blood shall be applied without regard as to whether a portion of such blood has passed through a parent who is not an enrolled member of the Tribe, Provided, that at least one (1) of the Parents of the individual seeking membership is an enrolled member of the Tribe.

4-2-4. OTHER TRIBE MEMBERSHIP. No person who has ever been enrolled or who has ever been recognized as a member of another Indian tribe shall be enrolled as a member of the Mescalero Apache Tribe. No one who is voluntarily or involuntarily removed from the roles of another Indian tribe shall be enrolled as a member of the Mescalero Apache Tribe.

4-2-5. APPLICATION OR PROCEDURE. Applications for enrollment as a member of the Mescalero Apache Tribe must be in writing accompanied with proof of parentage and the degree of Mescalero Apache blood of the person requesting enrollment. All such applications must be submitted to the Mescalero Apache Tribal Council.

4-2-6. COUNCIL EXCLUSIVE. The Mescalero Apache Tribal Council shall have exclusive and original jurisdiction and authority to determine enrollment of a new member of the Mescalero Apache Tribe. Determination by the Tribal Council shall be final.

4-2-7. NEW BORN CHILDREN. The parents of any new born child that can qualify pursuant to the terms of this Section may make application for enrollment of such new born child as a member of the Mescalero Apache Tribe. A new born child is a child less than one (1) year old.

CHAPTER 5

CHANGE OF NAME

SECTION 1. GENERAL

5-1-1. OVER EIGHTEEN. Any member of the Mescalero Apache Tribe over the age of eighteen (18) years of age, may upon Petition to the Tribal Court of the Mescalero Apache Tribe, have his name changed or established by Order of said Court, provided that he shall file the Notice hereinafter required:

- A. provide for the publication; and
- B. provided that no sufficient cause be shown to the contrary.

5-1-2. UNDER EIGHTEEN. Any member of the Mescalero Apache Tribe eighteen (18) years of age or under, may upon Petition of his parents or legal guardian, and if he be fourteen (14) years or over, joined by the applicant, have his name changed or established by Order of said Court, provided that the petitioner shall file the Notice hereinafter required:

- A. provide for the publication; and
- B. provided that no sufficient cause be shown to the contrary.

SECTION 2. PROCEDURE.

5-2-1. PETITION, NOTICE, PUBLICATION.

- A. The applicant shall file a Petition with the Tribal Court and request a hearing thereon.
- B. The applicant shall file with the Court an affidavit setting forth the name and address of each and every known creditor of the applicant.
- C. Upon an Application for changing or establishing a name, the Court must cause a Notice thereof to be placed upon the Tribal bulletin board at the Tribal Office for a period of two (2) consecutive weeks, which Notice must state the nature of the Application, the reason for the Application, and the time and place of the hearing thereon.

5-2-2. HEARING, CREDITORS. The Tribal Court shall set a time and place for hearing upon the Petition of the applicant for change of name and shall, at least ten (10) days prior to the hearing, forward Notice of the time and place of hearing to all creditors of the petitioner and upon hearing the testimony of the Petitioner and upon being fully advised of all pertinent facts, the Court shall enter its final Order herein, with a copy of said Order being forwarded to each of the creditors of the petitioner.

5-2-3. RECORDING.

- A. Upon entry, any Order changing any tribal member's name shall be filed by the Clerk of the Court in the records of the Tribal Courts and a duly certified copy thereof shall be filed in the Tribal Offices and the Bureau of Vital Statistics of the state of New Mexico and the office of Social Security.
- B. The Tribal Offices shall make all necessary records showing the name formerly used as having been changed to that shown in the Order of the Court.

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CHAPTER 6

APPOINTMENT OF GUARDIANS

SECTION 1. GENERAL

6-1-1. COURT AUTHORITY. The Tribal Court may, on the Court's own Motion, or upon the Petition of any interested member of the Mescalero Apache Tribe over the age of twenty-one (21) years, or upon the Petition of any interested agency of the B.I.A. or the Tribe, appoint a legal Guardian for any child under the age of eighteen (18) years, or for any person who is found by the Court to be mentally incompetent.

6-1-2. SCOPE. The Tribal Court shall also have the power to appoint Guardians for mental incompetents, illegitimate children, for children whose relatives are unable to care for them, and all other cases when it appears that a Guardian is necessary for the welfare of a minor.

6-1-3. PETITION INFORMATION.

- A. Any Petition for the appointment of a Guardian should state the name, age, and other identifying characteristics (if any) of the person for whom the guardianship is sought.
- B. Every appointment of a Guardian shall state specifically whether it be of the person, or of the person and the estate, or of just the estate of the minor or mentally incompetent person.

SECTION 2. PROCEDURE

6-2-1. HEARING, RESPONSIBILITY. The Court, after hearing, shall determine if there is a need to have a Guardian appointed for such minor under the age of eighteen (18) years, or such mentally incompetent person. Upon finding that such need exists, the Court will appoint an appropriate person and charge said person with the responsibility set forth in the Order of Appointment. Any person so appointed will be directly responsible to the Tribal Court, and shall perform his or her duties in accordance with the lawful directives of said Court.

6-2-2. NOTICE TO MINORS. Prior to the appointment of a Guardian, ten (10) days' notice shall be given to the alleged minor, or alleged mentally incompetent person. Notice shall also be given to the custodial parents, or at the discretion of the Court, to the nearest living relative.

6-2-3. PRIORITY OF PARENTS. Unless the Court finds that such persons shall be unfit to discharge the duties of Guardian, the natural father, or natural mother of any minor under the age of eighteen (18) years shall be given priority as Guardian of the person of said minor. Caring for and managing the estate of such minor shall remain with the Tribal Court.

6-2-4. OATH REQUIRED. Any person accepting a guardianship shall take and subscribe an Oath to be filed in the office of the Clerk of the Tribal Court, that he will truly, faithfully, legally and scrupulously perform the duties of Guardian towards his ward. All his accounts and settlements shall likewise be confirmed by a written Oath. He shall also return to the Tribal Court, upon receiving the estate of his ward, or any part thereof, an inventory of the same under Oath.

6-2-5. PRIORITY OF FAMILY. No person to whom the estate of any minor will probably descend, shall be appointed Guardian of such minor except the father, mother, sister of the mother, grandfather or grandmother.

6-2-6. TERMINATION FOR MINORS. Any guardianship established by the Tribal Court, for a minor under the age of eighteen (18) years of age, shall terminate on the eighteenth (18th) birthday of that minor, and the Guardian shall immediately account to the Tribal Court for all monies, or other assets held by the Guardian for the use and benefit of his ward.

6-2-7. TERMINATION FOR INCOMPETENT. If a Guardian be appointed for a mentally incompetent person, such guardianship shall continue until terminated by order of the Tribal Court.

SECTION 3. DUTIES.

6-3-1. EDUCATION AND CARE. A Guardian when appointed may be charged with the responsibility and care of the person and education of such child or mentally incompetent person, or may be charged with the care and management of the child's or mentally incompetent person's estate, or both.

6-3-2. RESPONSIBILITY.

- A. Guardians may have the care of the person of the ward, and the possession and management of his estate, both real and personal, and shall have authority to receive, and as Guardian, to sue for all debts, rents, accounts, and property, real and personal, due and belonging to the ward; and to sell, under the direction of the Tribal Court, the personal property of the ward. All transactions on behalf of the ward shall be in writing.
- B. All expenditures by any Guardian appointed by the Tribal Court will be made only after having received an appropriate directive from the Tribal Court.

6-3-3. YEARLY ACCOUNTING. Every Guardian shall deliver an accounting of his guardianship to the Tribal Court at the end of each year of his appointment, unless otherwise directed by the Tribal Court. Said Guardian shall fully account for all monies, effects, and property of his ward that may come into his hands. Any person, including the ward, may petition the Court to require the filing of the next annual accounting, or maintain an action in equity for an accounting by the Guardian at any other time. The Guardian shall be required at any time to demonstrate to the Court's complete satisfaction that all expenditures made and transactions conducted have been proper, regular and consistent with the Guardian's duties toward his ward.

6-3-4. COURT ORDERED ACCOUNTING. Any Guardian appointed by the provisions of this chapter shall, when directed to so do, make a full and complete final account to the Court, and shall deliver to the Court any and all funds remaining in his possession as Guardian, for dispositions as thereafter directed by the Tribal Court.

6-3-5. DISCHARGE. Upon approval of the final account of any Guardian, the Tribal Court shall release and discharge said Guardian from further responsibility in connection with the guardianship.

6-3-6. COURT ORDERED INVESTMENT. Whenever the Tribal Court deems it is appropriate, any funds held by the Guardian, or by the Tribal Court shall be invested in interest bearing accounts until needed.

6-3-7. COURT REPORTING. The Tribal Court shall report at least annually to the Tribal Council of the Mescalero Apache Tribe regarding the number, identity, and assets included in any Guardian's account being supervised by said Tribal Court.

6-3-8. MINOR'S RECOURSE, REIMBURSEMENT. Any person within one (1) year after reaching the age of eighteen (18) years, or any mentally incompetent person within one (1) year after having been judged competent, may petition the Tribal Court for further information regarding any expenditures which may have been made under the authority of any guardianship established by the Tribal Court. This right of action against the Guardian survives the exculpatory immunity accorded the Guardian in §6-3-5. If the Tribal Court shall determine that any amounts have been improperly spent or disposed of by any Guardian, the Tribal Court may in its discretion permit any such minor, or formerly incompetent person, to recover the amount of any improper expenditure made by any such Guardian.

CHAPTER 7

HEIRSHIP

SECTION 1. GENERAL

7-1-1. JURISDICTION. When a member of the Mescalero Apache Tribe or any other person residing on the Mescalero Apache Reservation dies, the heirs to the property of the decedent and the distribution of such property shall be determined by the Mescalero Apache Tribal Court in accordance with procedures established in this chapter. The jurisdiction or authority of the Court in such cases shall cover all of the decedent's property that is on the Reservation, including any such funds that may be held for the decedent in the Mescalero Apache Trust Funds and not restricted or held in trusteeship by the federal government. The jurisdiction of the Court will not cover any of the decedent's property that is not on the Mescalero Apache Indian reservation unless the laws of the Reservation or state where such property may be located will recognize ancillary proceedings.

The Mescalero Apache Tribal Court does not have jurisdiction over real estate or other property held in trust by the United States, nor over any property subject to restrictions upon alienation under the laws of the United States.

7-1-2. PETITION REQUIRED. Court action to determine heirship will begin with the filing of a Petition for Determining Heirs. The Petition may be filed by the Court upon its own Motion, or with the Court by any relative of the decedent or by any other interested person. The Petition must be affirmed to be true to the best of the petitioner's knowledge and contain as much of the following information as may be known:

- A. name of decedent;
- B. place and date of decedent's death;
- C. names of probable heirs and their relationship to decedent;
- D. items of property left by decedent and the location of such property; and
- E. names of all known creditors of the estate. If the decedent left a Will, the original Will, or a certified copy of it, shall be filed along with the Petition for Determining Heirs. The Petition in such a case will list all persons named in the Will.

SECTION 2. APPOINTMENT OF ADMINISTRATOR

7-2-1. QUALIFICATIONS. Only a person who is of sound mind, and has not been convicted of a felony shall be selected Administrator of an estate. A qualified person selected as an Administrator shall be given Letters of Administration by the Court, setting forth the appointment and duties of the Administrator.

7-2-2. ADMINISTRATOR NAMED BY A WILL. The person named as Executor or Administrator in a Will left by the decedent shall be given Letters of Administration unless the Court finds such person not qualified or such person refuses to serve as Administrator. If a person so named is not qualified or refuses to serve as Administrator, the Court shall appoint an Administrator as provided below.

7-2-3. SURVIVING SPOUSE OR NEAREST RELATIVE. If an Administrator is not named in a Will left by the decedent, the surviving spouse, if otherwise qualified, shall be appointed Administrator. If there is no surviving spouse, then the nearest relative of the decedent or another tribal member having an interest in the distribution of the estate and otherwise qualified, shall be appointed Administrator.

7-2-4. SPECIAL ADMINISTRATOR. The Court may appoint a Special Administrator to take charge of the estate until an Administrator is appointed as provided above, if there is any reason to believe the estate is in danger of being lost, injured or depreciated. The Special Administrator's responsibility shall end when the estate is turned over to the duly appointed Administrator.

7-2-5. OATH OF OFFICE AND BOND. The person appointed Administrator or Special Administrator shall sign an Oath to carry out the duties of Administrator faithfully and well. The person appointed Administrator shall also post a bond if and as required by the Court.

7-2-6. INVENTORY AND CUSTODY OF ESTATE PROPERTY. The Administrator shall collect, inventory, conserve, and manage all estate property until such time as the Court holds a hearing and distributes the estate. The Administrator may be allowed such compensation for services as the Court shall determine.

7-2-7. WIDOW'S OR MINOR'S ALLOWANCES. The Court may make a reasonable allowance from the estate for the surviving spouse or the minor children of the decedent, pending final distribution. All such allowances shall be deducted from the widow's or minor children's distributive share. If the minor children are the children of the decedent but not the children of the surviving spouse, the Court may order the allowance divided between the surviving spouse and the minor children, as may be just.

SECTION 3. FILING CREDITOR'S CLAIMS.

7-3-1. TIME FOR FILING CLAIMS. Persons having claims against the estate of the decedent may file the same with the Court at any time after the death of the decedent and up to and including the time of the scheduled hearing to determine heirs.

7-3-2. CLAIM INFORMATION. Claims against the estate must be filed in duplicate. The claims must be itemized in detail and notarized. Each such claim must be supported by an Affidavit of the claimant or someone in his behalf that the amount is justly due from decedent, that no payments have been made on the account that are not credited thereon, and that there are no offsets to the knowledge of claimant, in accordance with forms approved by the Court.

7-3-3. CLAIMS FOR CARE AND MAINTENANCE OF DECEDENT. Claims for care and maintenance of decedent will not receive favorable consideration unless clear and convincing proof is offered showing that agreement for payment had been made in advance of the giving of the care.

7-3-4. CLAIMS BARRED. All claims against the deceased or the estate of the deceased person not filed on or before the date of the scheduled hearing to determine heirs are forever barred.

7-3-5. EVIDENCE AND HEARING. Any person who has filed a claim must, if so required by the Court, produce evidence and be present at the hearing to support the claim. The claim of any person failing to do so when required by the Court shall not be allowed.

SECTION 4. HEARING TO DETERMINE HEIRS.

7-4-1. NOTICES.

- A. After the Petition for Determining Heirs has been filed, the Court shall have a Notice issued that such a Petition has been filed. This Notice shall be on forms approved by the Tribal Court. Such a Notice shall be put before the public for four (4) successive weeks by posting in public places on the Reservation and surrounding communities and/or by such other means as may be designated by order of the Court.
- B. The Notice shall, in addition to publication as provided above, be served on each person named in the Petition who resides within the boundaries of the Mescalero Apache Reservation and who has not joined in the Petition. Such service shall be made by a duly authorized Mescalero Apache Tribal Police Officer who shall certify the manner of delivery of the Notice and shall return the same to the Court.
- C. All persons named in the Petition, not residing within the external boundaries of the Mescalero Apache Reservation, shall be given Notice by first class mail to the address or addresses stated in the Petition, such mailing to be at least twenty (20) days prior to the date set for the hearing.

- D. The Court shall cause to be filed a Certificate of such mailing setting forth the name and address of the person to whom said Notice was mailed and the date of mailing.
- E. The Notice shall, in addition to other provisions as above provided, set forth the date and time of the hearing.
- F. The Court may order such other and further Notice as the ends of justice may require.

7-4-2. INVENTORY, APPRAISAL. The Administrator of the estate after being duly qualified, shall forthwith and not later than thirty (30) days after receiving the Letter of Administration, file an inventory and cause an appraisal to be made of all the property in the estate. If no Administrator is appointed, the Court shall file an inventory and cause an appraisal to be made on behalf of the estate.

7-4-3. APPOINTMENT OF APPRAISERS. The Court shall, if the estate consists of personal property other than money and it is deemed necessary, issue a Warrant or Warrants to not more than three persons, not related to the decedent or interested in administration of the estate, authorizing them to list and appraise all of the goods, chattels and personal estate of decedent, known to them or to be shown to them by the Court or the Administrator and return the same to the Court within thirty (30) days after appointment.

7-4-4. HEARING, VALIDITY OF WILL. At the time and date set forth for the hearing in the Notice in §7-4-1, Sub-Section A, the Court shall review and examine the files, hear all necessary evidence from disinterested witnesses, examine and review all claims filed and shall thereupon determine:

- A. If a Will has been filed, the validity of the Will. This shall be done by examination of the attesting witnesses to the Will, or if they are not available, by the best supporting evidence obtainable.
- B. If no Will has been filed, or if a Will was filed and not approved by the Court under part A above, the Court by examination of the files and census rolls of the Mescalero Apache Tribe and questioning of interested and disinterested witnesses, under oath, shall determine the heirs of the decedent and their share in the estate in accordance with the distribution of heirship interests provided in Section 5 of this chapter.

7-4-5. REPRESENTATION OF MINORS. Any probable heir under the age of eighteen (18) years, if not married, shall be considered as a minor, and if any such minor is not represented at the hearing by a Guardian, the Court may appoint a disinterested person to represent such minor.

7-4-6. RECORD OF HEARING. The Court shall cause to be completed in detail forms to be approved by the Court or in lieu thereof, if the Court deems it necessary, to transcribe and retain in a written record, the testimony given to the Court concerning determination of heirs or the admission of a Will to probate.

7-4-7. COURT DECISION.

- A. After the hearing set forth above, the Court shall determine the questions of law and fact and shall incorporate the same into a decision in writing, and a copy of the decision shall be mailed or delivered to all persons who claimed a share in the estate.
- B. The decision shall also set forth the Court Estate Fee to be paid out of the estate, or by the heirs, legatees and devisees, in the event the estate is distributed in kind in the following amounts:

Small estates under \$1,000.00	None
Estates over \$1,000 but not over \$2,000	\$20.00
Estates over \$2,000 but not over \$3,000	\$30.00
Estates over \$3,000 but not over \$4,000	\$40.00
Estates over \$4,000 but not over \$5,000	\$50.00

Estates over \$5,000 but not over \$7,500 \$75.00

Estates over \$7,500 \$100.00

- C. A copy of the decision shall be furnished to the Superintendent of the Mescalero Apache Indian Agency, Mescalero, New Mexico, and one copy is to be retained in the Court files.

7-4-8. APPEAL.

- A. In the event any claimant against the estate is dissatisfied with the decision of the Court, he may file a written Request for an appeal within thirty (30) days after the date of the decision, which appeal shall be filed and heard in accordance with this Code; provided, however, that ten (10) days prior to hearing such appeal, notice shall be given in writing to all parties whose interest in the estate might be adversely affected by such appeal.
- B. The Court shall notify the Administrator, if one has been appointed, and order a stop of any action to distribute or close the estate, until the time for appeal has run with no appeal filed. If an appeal has been filed, no distribution shall be made until the appeal is over.

SECTION 5. DESCENT AND DISTRIBUTION OF INTESTATE'S ESTATE.

7-5-1. INTEREST OF HEIRS.

- A. Death of Husband-Community Property. Upon the death of the husband, the community property goes to the surviving wife.
- B. Death of Wife-Community Property. Upon the death of the wife, the entire community property belongs to the surviving husband, except for any part of it that may have been given to her before by a judicial decree for her support and maintenance. Any such part is subject to disposition by her Will and in the absence of such disposition, goes to her heirs.
- C. Inheritance by Surviving Spouse and Children. The property of any unmarried person or the separate property of any married person, whenever such person dies without a Will disposing of the estate, descends, subject to the payment of the separate obligations of the deceased person, in the following manner:

One-fourth (1/4th) to the surviving husband or wife and the remainder in equal shares to the children of the decedent, or further, to the heirs of the bodies of such children, unless there be no surviving children or heirs of the body of such children; then the whole of the estate passes to the surviving husband or wife.

- D. Widow's Allowance. The widow or minor children of the decedent shall be allowed the sum of Three Hundred Dollars (\$300.00) per month as a temporary living allowance for a term not to exceed six (6) months, except upon application to and Order of the Tribal Court.
- E. Inheritance by Heirs of Deceased Child. If any one of the children of the decedent be dead, the heirs of such child shall inherit his share in accordance with the rules herein prescribed in the same manner as though such child had outlived his parents.
- F. Non-Members. Unless otherwise specifically set forth in the Last Will and Testament of a tribal member, a surviving Non-Member spouse shall have the right to occupy the family dwelling (home) located on any Assignment, throughout the balance of their lifetime, subject to the following terms and conditions:
1. In the event that the surviving Non-Member spouse should subsequently marry a Non-Member, the right to occupy the dwelling located on the Mescalero Indian reservation shall immediately terminate.
 2. Upon the death of a Non-Member spouse, the right to occupy the dwelling located on an

Assignment and the benefit thereof, shall pass to the minor children of the deceased tribal member. In the event there are no surviving minor children of the deceased tribal member, the right to occupy the dwelling, together with the right to use of the Assignment, shall revert to the Mescalero Apache Tribe. Subsequent to that reversion, any tribal member who is a child of the deceased tribal member shall have the right to petition the Tribal Council for the privilege to use such dwelling and Assignment.

3. In the event that the conduct of a Non-Member surviving spouse is found by the Tribal Council to be detrimental to the interests of the Mescalero Apache Tribe, the right of the Non-Member surviving spouse to occupy such dwelling house and the Assignment during their lifetime shall be terminated, upon majority vote of the Tribal Council, provided that such Non-Member spouse shall have had an opportunity to be heard by the Tribal Council on such issue.
4. In the event that any tribal member shall leave Non-Tribal member minor children residing on the Reservation at the time of his death (whether or not a Non-Member tribal spouse survives), the Non-Member minor children shall have the right to petition the Tribal Court, through their Guardian, for the right to use an Assignment during the duration of their minority.
5. In addition, the Non-Member surviving spouse shall have the right to remove from the Mescalero Reservation any home which has been purchased or erected with funds of the married couple, provided,
 - a. They remain unmarried;
 - b. They retain their place of residence in the home;
 - c. Their rights to occupy such dwelling (home) has not been terminated under Section 4 above;
 - d. Such home shall be deemed to be removable personal and private property, if in fact the structure can be moved as a structure;
 - e. Any such movement of the structure must be accomplished within a reasonable period of time after Notice to the Tribal Council;
 - f. In the event such a structure is moved, it shall be moved to lands other than Reservation lands; and
 - g. The cost of moving said structure, and any liability resulting from such move, shall be borne by the Non-Member surviving spouse and the person moving the structure;
 - h. The area from which such structure is moved is to be left clean and safe by the person moving the unit;
 - i. A reasonable deposit to insure a clean and safe area is left by the owner, which deposit the Tribal Council hereby authorizes the President to require.
6. A Non-Member surviving spouse who has the right to occupy the family dwelling (home) located on any Assignment under Section 1 hereof, shall have the right to bargain, sell or assign any interest in the improvements located thereon, together with the land Assignment, provided that:
 - a. Such improvements were placed on the land Assignment (or leased land) by the deceased tribal member and the surviving Non-Member spouse during the term of their marriage to each other;

- b. They remain unmarried;
- c. They retain their place of residence in such dwelling (home);
- d. Their right to occupy such dwelling (home) has not been terminated under Section 4 above;
- e. Such bargain, sale or assignment of the interest in the dwelling (home) is to a member of the Mescalero Apache Tribe;
- f. The term during which the assignee will be permitted to occupy the dwelling (home) and the Land Assignment is approved by the Tribal Council, if it exceeds the life expectancy of the Non-Member surviving spouse making the bargain, sale or Assignment.

7-5-2. DYING WITHOUT ISSUE, INHERITANCE BY WIDOW OR PARENTS. If the intestate leaves no children, all of their estate shall go to the surviving spouse; if there are no surviving children and no spouse, the estate goes to the intestate's parents, or if one parent be dead, to the surviving parent, and if both parents be dead, then the estate shall be disposed of in the same manner as if both parents had outlived the decedent, and died in possession and ownership of the estate; and so on through the ascending ancestors and their issue. If heirs are not thus found, the estate shall go to the heirs of the spouse of the decedent according to like rules; and if the decedent had more than one spouse who died while married to them, the heirs of each spouse will divide the estate equally.

7-5-3. POSTHUMOUS CHILDREN UNPROVIDED FOR BY THEIR FATHER'S WILL. Posthumous children not provided for by their father's Will shall inherit the same interest as though no Will had been made. The amount thus allowed to a posthumous child, shall be taken proportionately from the interests of the other heirs, devisees and legatees, but the Will for this reason shall not be otherwise revoked.

7-5-4. INHERITANCE BY AND FROM ADOPTED CHILD. Whenever a child has been adopted in accordance with tribal requirements, such child shall inherit from each of the adopting parents as if he were a natural child of the adopting parents. An adopting parent who is an enrolled member of the Tribe shall inherit from the adopted child as if the child were his (their) natural child. For all purposes of inheritance from the adopted child, the child shall be considered the natural child of any adopting parent(s) who is (are) enrolled member(s) of the Tribe. In the event of the death of such adopted child, his estate shall ascend, descend and be distributed as it would for natural-born children of any adopting parent(s) who is (are) enrolled member(s) of the Tribe. The estate in such a case would exclude the natural or blood parents of such child, except where one of the natural parents is married to the other adopting parent who is an enrolled member of the Tribe, in which event the child will be treated as the natural child of both parents for purposes of inheritance from the child. Where neither adopting parent is a member of the Tribe or where a natural parent not an enrolled member of the Tribe marries a person not an enrolled member of the Tribe, then the estate of a deceased adopted child shall escheat to the Tribe.

7-5-5. ILLEGITIMATE CHILD, INHERITANCE BY AND FROM, EVIDENCE OF RECOGNITION BY THE FATHER. Illegitimate children shall inherit from the mother and the mother from the children. Illegitimate children shall inherit from the father whenever they have been recognized by him as his children, in writing, by a document signed by him. The signed document must be such as to show upon its face that it is so signed with the intent of recognizing such children as heirs. In the event of the loss or destruction of such a document, supported statements of the decedent shall be admissible to prove such loss or destruction as well as the existence and contents thereof. Such statements shall be supported by proof that the decedent openly recognized such children as his own. Under such circumstances, if the recognition of relationship has been mutual, the father may inherit from his illegitimate children, but in this inheriting from an illegitimate child, the mother and her heirs take preference over the father and his heirs.

7-5-6. LEGITIMATION BY MARRIAGE OF PARENTS. In the absence of clear and convincing proof to the contrary, the marriage of any man to a woman who has previously borne illegitimate children will be considered as equivalent to written acknowledgment that he is the father of such illegitimate children.

7-5-7. PROVISIONS CONCERNING WIDOWS APPLY TO WIDOWERS. All provisions herein relating to Wills and to estates of deceased persons made in regard to the widow of a deceased husband, shall be applicable to the surviving husband of a deceased wife.

7-5-8. BLOOD LINE, APPLICATION OF OTHER LAW. In application of the above rules to determine heirs, the right of heirship shall first descend the full length of the blood line and then ascend, excepting only the case of the surviving spouse of a mate first deceased. The Court shall resolve any questions of heirship not covered herein by referring to approved Mescalero customs or the laws of the state of New Mexico.

7-5-9. ESTATES UNDER TWENTY-FIVE HUNDRED DOLLARS (\$2500.00).

- A. In all cases where the estate of the decedent is valued by the Court at twenty-five hundred dollars (\$2500.00) or less, the Court, upon its own Motion, or upon a Verified Application by a person interested in the estate, may determine the distribution of the estate by an informal hearing and thereupon authorize the payment, transfer, or delivery thereof. In such cases, the Court may or may not appoint an Administrator and require security, in its discretion. In either event, receipts shall be filed with the Court showing that distribution was carried out pursuant to the Court order. If, in the opinion of the Court, the estate is of such kind or nature to require regular administration, irrespective of the value being less than twenty-five hundred dollars (\$2500.00), the Court may choose to require the estate to be administered under the regular probate provisions.
- B. Any decision of the Court under this Section shall be an interlocutory decree with public Notice for ten (10) days. The decree shall not become final for a period of ten (10) days, and if within such ten (10) day period any person shall file with the Court written objection to the decision or any other matter relative to such estate, the interlocutory decree shall then become void and the matter shall be processed as any other estate. In the event no objection is filed within the ten (10) day period, then the interlocutory decree shall become operative and final and not subject to appeal.

7-5-10. INTEREST OF CREDITORS. Claims of creditors shall be allowed priority in payment in the following order:

- A. Court estate fee;
- B. Claims for expense of last illness and funeral charges;
- C. Claims of indebtedness to the United States or any of its agencies which are entitled to preference by express provisions of federal law;
- D. Claims of indebtedness to the Tribe of which the decedent was a member or to any of its subsidiary organizations;
- E. Other claims of the United States or its agencies;
- F. Claims authorized in writing by the Tribal Council during the life of the Indian;
- G. Claims of the state on account of social security or old age assistance payments;
- H. Claims of the widow or children of the decedent for their allowance as otherwise provided herein;
- I. Claims of general creditors provided that no claims of general creditors shall be allowed if the value of the estate is One Thousand Dollars (\$1,000.00) or less after deducting items A through G above, and the decedent is survived by a spouse or by one or more minor children.

7-5-11. WHEN THERE ARE NO HEIRS. In the event that diligent search of records and other available sources of information fails to reveal persons eligible to receive inheritance from the estate and the same continues for a period of two (2) years, all of the unclaimed estate shall become the property of the Mescalero Apache Tribe.

7-5-12. SALE OF ESTATE PROPERTY.

- A. Within a reasonable time after appraisal of the property of the estate, the Court may order the Administrator to sell designated personal property of the estate in the most advantageous manner when necessary to meet the proper cash demands against said estate, except in the following classes:
1. Property specifically bequeathed or devised;
 2. Property selected by the widow or for a child in lieu of cash;
 3. Property, the immediate sale of which would be in the opinion of the Court, detrimental to the welfare of the estate;
 4. Property which by an agreement of the heirs can be distributed in kind as a credit against their proportionate share of the estate.
- B. The order of the Court shall specify whether the sale shall be public or private and the date and terms of the sale. In the event of public sale, at least ten (10) days prior to the sale, a notice of such sale shall be posted before the public at such places as the Court may determine, and a copy mailed to each heir, devisee or legatee on the day of the posting of such Notice. The estate property may not be purchased either directly or indirectly by any appraiser, Administrator or Executor of the estate either regular or special, or other officer of the Court.
- C. When the heir entitled to receive a deceased's estate by Will or by intestacy is not an enrolled member of the Mescalero Apache Tribe, all property in the deceased's estate which Non-Members of the Tribe are prohibited from holding or owning shall be sold pursuant to this §7-5-12 of this Code with the proceeds therefrom paid into the deceased's estate as a part thereof.

SECTION 6. PAYMENT OF CLAIMS AND DISTRIBUTION OF ESTATE.

7-6-1. DEBTS AND LEGACIES. If no appeal has been filed within thirty (30) days after decision upon the hearing, the payment of all debts allowed against the estate, including any legacies declared in the decedent's Will and expenses of administration, may be made by the Administrator, if one has been appointed, or the Court may cause such payment to be made on behalf of the estate.

7-6-2. DISTRIBUTION TO HEIRS. After payment of all allowed debts as set forth in §7-5-10 of this Code, the Court shall direct the Administrator, if one has been appointed, to distribute the surplus remaining in his hands among the heirs, devisees, and legatees of the decedent, as provided in the decision of the Court, or if no Administrator has been appointed, the Court shall cause such distribution to be made on behalf of the estate.

7-6-3. TRUST FUNDS. In the event the estate includes unrestricted funds credited to the decedent in the Mescalero Apache Trust Funds, the Court shall issue a written request, accompanied by two executed copies of the Court's decision of heirship, to fulfill the Court judgment.

7-6-4. TRIBAL COUNCIL ACTION. If there are funds included within the estate inventory requiring the Tribal Council to draw up a resolution for withdrawal or liquidation, the Tribal Council, upon receipt of a certified copy of said inventory showing such inclusion, shall immediately order a withdrawal of such funds and shall place them to the credit of the estate of the decedent. Such funds immediately become subject to Court order for satisfaction of claims, debts, allowances or other distribution.

SECTION 7. REPORTS AND FINAL SETTLEMENT.

7-7-1. ACCOUNTING. In the event the estate is not closed within six (6) months after date of the original Petition for Probate, as set forth in 7-1-2 of this Code, the Administrator, if one has been appointed, or the Court in behalf of the estate, shall cause to be filed an intermediate report setting forth the receipts and expenditures and distributions in the estate for the six (6) month period. Such reports shall be made monthly thereafter until the estate shall be finally settled.

7-7-2. PETITION FOR CLOSING ESTATE. After payment of all debts and distribution of all remaining estate property, as set forth in §7-6-1 of this Code, and provided there are no further assets to be acquired for the estate and under the jurisdiction of this Court to be distributed in kind or converted to cash, the Administrator, if one has been appointed, shall file a Petition to set a date for final settlement together with a final report of receipts, expenditures, and distribution in the estate.

7-7-3. FINAL REPORT. The Court may then forthwith issue a decree of final settlement and discharge the Administrator and his or her sureties from further liability. In the event no Administrator has been appointed, the Court shall prepare the Final Report and Decree of Final Settlement to be entered on behalf of the estate.

SECTION 8. PRESUMPTION OF DEATH.

7-8-1. WHEREABOUTS UNKNOWN SEVEN (7) YEARS. Any member of the Mescalero Apache Tribe who shall have left his or her usual place of abode within the exterior boundaries of the Mescalero Apache Reservation, and shall not have been seen or heard from by his or her relatives or other persons reasonably expected to hear from him or her, for a period of seven (7) years, shall be presumed dead; and if such persons owned property, real or personal, within the Mescalero Reservation, administration of the estate of such person may be had in the manner as provided by the ordinances of the Mescalero Apache Tribe.

7-8-2. NON-MEMBERS OFF RESERVATION SEVEN (7) YEARS. This Section shall also apply to any one not an enrolled member of the Mescalero Apache Tribe, but who has accumulated property and left it within the exterior boundaries of the Mescalero Apache Reservation.

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CHAPTER 8

COLLECTION AND REPOSSESSION

SECTION 1. CITATION.

8-1-1. CITATION. This Chapter shall be known and cited as "Mescalero Apache Collection and Repossession Code."

SECTION 2. DEFINITIONS.

8-2-1. DEFINITIONS.

- A. **NON-RESIDENT CREDITOR.** Non-resident Creditor means a lender, seller or other person in whose favor there is a security interest, and whose place of business is without the exterior boundaries of the Mescalero Apache Reservation.
- B. **DEBTOR.** Debtor means a person who owes payment or other performance of an obligation secured and who resides on the Reservation or whose security for the obligation is lawfully on the Reservation.
- C. **COLLATERAL.** Collateral means the property subject to a security interest or a Security Agreement.
- E. **SECURITY AGREEMENT.** Security Agreement means an agreement which creates or provides for a security interest.

SECTION 3. PROCEDURE WITHOUT SUIT.

8-3-1. REQUIRED INFORMATION. Any Non-resident Creditor seeking to inquire as to the status of collateral located on the Mescalero Apache Reservation shall provide the following information, and before repossessing or attempting to repossess any collateral located on the Reservation, shall execute the following documents before contacting the Debtor on the Reservation, or before repossession or attempting to repossess collateral located on the Reservation:

- A. The information required of this Section shall consist of the following:
 - 1. Name of Non-resident Creditor and the name and address of the agent representing the Nonresident Creditor and such agent's position or authority to act on behalf of such Nonresident Creditor;
 - 2. Name of Debtor, the status of the Debtor's account with such Non-resident Creditor, including the principal amount owed and the amount of any back payments in arrears;
 - 3. The original purchase price or original amount of the obligation owing the Non-resident Creditor; and
 - 4. A reasonable description of the collateral sought by such Non-resident Creditor.
 - 5. Status of account as to any deficiency, including amount;
 - 6. Original purchase price;
 - 7. Description of collateral.
- B. The documents required of any Non-resident Creditor under this Section shall consist of a written consent to the jurisdiction of the Mescalero Apache Tribal Court for any civil action arising out of the repossession or collection effort and a written waiver of right to collect deficiency if the collateral is repossessed. The documents required by this section may be in the following form:

Consent to Jurisdiction and Waiver of Right to Collect Deficiency

_____, a Creditor of _____, Debtor, as a condition to employing collection and repossession efforts on the Mescalero Apache Reservation, hereby irrevocably consents to the jurisdiction of the Mescalero Apache Tribal Court for any civil action or proceeding arising out of the Creditor's collection and repossession efforts.

Creditor further irrevocably waives and agrees not to sue for or attempt to collect or enforce any right such Creditor would otherwise have to a deficiency owing on the obligation claimed by such Creditor to be owed by the Debtor in any Court or tribunal of any jurisdiction should such Creditor repossess or take possession of any collateral from the Mescalero Apache Reservation.

Non-resident Creditor

8-3-2. LETTER. Upon supplying the above information to the Tribal Court, and upon execution of the above documents, the Non-resident Creditor may contact the Debtor by letter, requesting the return of the collateral, provided such Creditor notifies the Debtor, in writing, that the Debtor will not be liable for any deficiency owing on the obligation after disposition of the collateral.

8-3-3. VOLUNTARY RELINQUISHMENT. Should the Debtor agree to return the collateral as requested, the Non-resident Creditor, upon proof that the collateral is being relinquished voluntarily, may secure from the Tribal Court an Order allowing the Nonresident Creditor to take possession of the collateral and remove same from the Reservation. The Nonresident Creditor shall be accompanied at all times while securing possession of the collateral by a Reservation Law Enforcement Officer, or such other person as the Court shall, in writing, designate. The Nonresident Creditor shall pay to the Tribal Court the sum of Twenty-five Dollars (\$25.00) for a filing fee and police service fee at the time the above mentioned Order is secured from the Tribal Court.

SECTION 4. PROCEDURE FOR SUIT.

8-4-1. SUIT. Should the Debtor refuse to surrender the collateral or should a dispute arise as to such collateral or the Security Agreement, the Non-resident Creditor may bring suit in the Mescalero Apache Tribal Court, seeking a judgment of possession of the collateral. No suit may be begun until the procedures in Section 3 of this chapter have been followed, nor may any repossessions take place without suit unless pursuant to Section 3 of this chapter.

8-4-2. FEE. A fee of Twenty-five Dollars (\$25.00) for filing and service of process shall be paid at the time of filing the action by the non-resident Creditor.

8-4-3. COURT PROCEDURE. Any suit filed under the Mescalero Apache Collection and Repossession Chapter shall proceed under the rules and procedures of the Mescalero Apache Tribal Court. If the Court finds by a preponderance of the evidence that the Debtor is in default of a Security Agreement, and that such Security Agreement provides for a security interest in the collateral, and that the Debtor has no valid defense to the Creditor's claim, the Court may enter judgment allowing the non-resident Creditor to take possession of the collateral upon a specified date, unless the Debtor has redeemed the collateral by paying all payments which are in arrears on the non-resident Creditor's obligation, plus the filing fee hereunder.

8-4-4. NO DEFICIENCIES. A Debtor is not liable for any deficiency owing on an obligation secured by collateral where the collateral is repossessed by a non-resident Creditor on the Mescalero Indian reservation.

SECTION 5. UNLAWFUL COLLECTION AND REPOSSESSION PRACTICES

8-5-1. UNLAWFUL COLLECTION AND REPOSSESSION PRACTICES. It is unlawful for any non-resident Creditor to repossess, attempt to repossess, take possession of, or to remove collateral from the Mescalero Apache Reservation, or to attempt to collect any debt upon the Mescalero Apache Reservation:

- A. Unless such Creditor shall have first complied with all applicable provisions of this chapter;
- B. By use of force, violence, threats, breach of the peace, misrepresentation, or false statements;
- C. To take possession of any collateral located on the Mescalero Apache Reservation without first notifying the Debtor contemporaneous with the Creditor's taking possession thereof, unless such non-resident Creditor shall have a valid judgment from the Mescalero Apache Tribal Court giving the Creditor the right to take possession of the collateral.

SECTION 6. DISPOSITION OF COLLATERAL; REDEMPTION.

8-6-1. DISPOSITION OF COLLATERAL. Any non-resident Creditor who repossesses collateral from the Mescalero Apache Reservation, whether voluntarily or by judicial process from the Mescalero Apache Tribal Court, shall thereafter dispose of the collateral in accordance with the provisions of Part 5 of Article 9 of the Uniform Commercial Code, as enacted by the State of New Mexico, except as the same is inconsistent with this chapter.

8-6-2. REDEMPTION OF COLLATERAL. The Debtor may redeem the collateral repossessed from the Mescalero Apache Reservation by any non-resident Creditor at any time prior to its sale by paying the Creditor all back payments owing on the Creditor's obligation, plus reasonable costs of repossession, not to exceed \$150.00. The Creditor shall notify the Debtor, in writing, of the Debtor's right to redeem and the amount required of the Debtor to redeem and of the time of any public sale or the time after which any private sale of the collateral will be conducted. The notice required by this Section must be given by the non-resident Creditor by certified mail, return receipt requested, given after the Non-resident Creditor has taken possession of the collateral.

SECTION 7. JURISDICTION REMEDIES.

8-7-1. EXCLUSIVE JURISDICTION. The Mescalero Apache Tribal Court shall have exclusive jurisdiction to hear any claim seeking relief for any violation of this chapter by any non-resident Creditor.

8-7-2. VIOLATIONS. On Proof by a preponderance of the evidence that any non-resident Creditor has violated this chapter, the Court may enter judgment providing for:

- A. Actual monetary damages in favor of the aggrieved party, including attorney's fees and Court cost, or the sum of \$250.00, whichever is greater;
- B. Punitive damages in favor of the aggrieved party in the discretion of the Court, upon a finding that the violation was willful;
- C. An injunction prohibiting such non-resident Creditor from committing further violations of this chapter, which injunction may be enforced by civil contempt of jurisdiction of the Mescalero Apache Tribal Court.

SECTION 8. HEARINGS TO ENFORCE JUDGMENT.

8-8-1. SUPPLEMENTAL HEARINGS. In any tribal cause for which there is a Final Decree mandating an amount due and owing another party, that party or successor thereto may commence supplementary proceedings to facilitate the collection of such amount. The collecting party may seek a hearing, deposition, or other form of meeting from which a determination of the Debtor's ability to pay is to be made. Up to four percent (4%) of the Debtor's gross income, minus all income and social security taxes, may be subject to regular bimonthly collection.

8-8-2. ENFORCEMENT OF SUPPLEMENTARY HEARINGS. In the event the judgment Debtor discontinues payments according to the schedule as stipulated in these supplementary proceedings or in the original Decree, the Creditor may request a hearing that the Debtor show cause as to why sufficient and regular payments have not been forthcoming. The Debtor providing insufficient reason for such non-payment shall be in contempt of Court and subject to jailing until any deficiency is paid. Further, either

Creditor or Debtor may institute a proceeding to modify the Decree upon grounds that the Debtor's wages or resources have materially increased or decreased.

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CHAPTER 9

SENTENCES

SECTION 1. NATURE OF SENTENCE.

9-1-1. ESTABLISHED IN PENAL CODE. Sentences for offenses in violation of the laws of the Mescalero Apache Tribe are those as shown in Chapter 10 of this Code.

9-1-2. NATURE OF SENTENCE. Any Indian who has been convicted by the Mescalero Apache Tribal Court for violation of a provision of Chapter 10 of this Code may be sentenced by the Court in lieu of jail time to work for the benefit of the Tribe for any period found by the Court to be appropriate; but the period fixed shall not exceed the maximum period set for the offense in the law and order ordinances and shall begin to run from the day of sentence. During the period of sentence, the convicted person may be confined in the tribal jail if so directed by the Court. Work shall be done under the supervision of any authorized agent of the Tribal Council, as the Court may provide.

9-1-3. RESTITUTION. In addition to any sentence, the Court may require an offender, who has inflicted injury upon the person or property of any individual, to make restitution or to compensate the party injured through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

9-1-4. INFORMATION CONSIDERED. In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, and whether the offense was malicious or willful and whether the offender has attempted to make amends, and shall give due consideration to the extent of the defendant's resources and needs of his dependents.

SECTION 2. PROBATION, PAROLE, FINES.

9-2-1. PROBATION.

- A. Where sentence has been imposed upon any person, the Mescalero Apache Tribal Court may, in its discretion, suspend the sentence imposed and allow the offender his freedom on probation, upon his signing a Pledge of Good Conduct during the period of the sentence upon the form provided therefor. The judge may place said probationer in the custody of such person as the Court deems fit.
- B. Any person who shall violate his probation shall, after a hearing, be required to serve the balance remaining of the original sentence.

9-2-2. PAROLE.

- A. Any person committed by the Mescalero Apache Court, who shall have without misconduct, served one half (1/2) of the sentence imposed by such Court, shall be eligible for parole. Parole shall be granted only by the Court upon the signing of the form provided therefor.
- B. Any person who shall violate any of the provisions of such parole shall be punished by being required to serve the balance of the original sentence.

9-2-3. DEPOSIT AND DISPOSITION OF FINES. All fines shall be paid to the Clerk of the Court who will turn over said funds to the Financial Clerk of the Tribe.

SECTION 3. HABITUAL OFFENDERS, INTOXICATION AND SEX OFFENSES.

9-3-1. INTOXICATION. Any person convicted five (5) or more times in any twelve (12) month period for intoxication or drunkenness shall, as a part of his last sentence for such offense, be required to submit to a detoxification and health-care program under the supervision of the Tribal Court.

9-3-2. SEX OFFENSES. Any person convicted of three (3) or more sex offenses over which the Tribal Court has jurisdiction shall, as a part of his sentence, be required to submit to psychiatric treatment and health-care under the supervision of the Tribal Court.

9-3-3. REPORTS. The Branch of Social Services of the Mescalero Indian Agency and/or the local office of the Indian Health Service shall render written reports to the Tribal Court on a weekly basis as to the status and progress of care and treatment ordered by the Court pursuant to this Section.

SECTION 4. PRESIDENTIAL POWER TO PARDON.

9-4-1. PARDONS. The President of the Tribe shall have the power to pardon any person, other than himself, convicted of a tribal offense. In addition, he shall have the power to restore such person's eligibility to run for tribal office. He may elect to pardon an offense, and defer or refrain from restoring an applicant to eligibility for office.

SECTION 5. ALTERNATIVE SENTENCING.

9-5-1. CONTENT OF COURT ORDERS WHICH SPECIFY TREATMENT.

- A. Court orders from the Mescalero Tribal Court which deal with Court-ordered treatment will include the following:
 - 1. The goals of the Court-ordered treatment.
 - 2. The length of the treatment, e.g., eight (8) weeks.
 - 3. The frequency of the treatment, e.g., weekly.
- B. Court orders for Court-ordered treatment will specify the reporting requirements by agency providing the treatment, to include:
 - 1. Weekly compliance/noncompliance report.
 - 2. Summary report to be submitted by the agency when Court-ordered treatment has been completed.

9-5-2. NON-COMPLIANCE WITH COURT-ORDERED TREATMENT.

- A. In the event that the individual ordered into treatment does not comply with the provisions of the Court Order, the agency providing treatment will notify the Court Administrator.
- B. The non-compliant individual will be subject to the penalties for disobedience of the Court Order.

9-5-3. PREPARATION OF COURT ORDER SPECIFYING TREATMENT.

- A. The Court Administrator prepares all Court Orders (except some Juvenile Court Orders).
- B. The Court Administrator will provide the agency providing Court-ordered treatment a copy of the Court Order.

SECTION 6. DOMESTIC VIOLENCE

9-6-1. DOMESTIC VIOLENCE SENTENCING. In addition to the imposition of such confinement and/or fine or sentencing provided pursuant to Chapter 10, which may be assessed for a conviction or guilty plea to any criminal charges involving domestic violence, the Court may, as it deems appropriate, order the following:

- A. A pre-sentence report to be completed by the Tribal Prosecutor.
- B. An Order of Protection temporarily excluding the perpetrator from the home of the alleged victim(s) and restraining the perpetrator from contact with the victim(s).
- C. An order to participate in a domestic violence treatment program.

- D. An order of restitution to compensate for injury to persons or property, such as lost income, the cost of temporary housing and other reasonable costs to the victim(s) arising from the incident of domestic violence.

9-6-2. REPEAT OFFENDERS.

- A. Any person convicted of domestic violence two (2) or more times shall, as a part of his or her last sentence, be required to submit to counseling specific to domestic violence offenders.
- B. Furthermore, regardless of the penalties provided in Chapter 10 of the Tribal Code, any such repeat offender may be sentenced to imprisonment for a period up to three hundred and sixty-five (365) days and a fine of One Thousand Dollars (\$1,000.00).

9-6-3. FIREARM PROHIBITION. Any person convicted of an offense involving domestic violence may be prohibited from possessing a firearm for a period of up to three (3) years from the date of conviction for such offense.

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CHAPTER 10

OFFENSES AND PENALTIES

SECTION 1. GENERAL.

10-1-1. APPLICATION.

- A. A crime is deemed to have been committed before the effective date of this chapter if any of the essential elements of the crime occurred before that date.
- B. Prosecution for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed with the exception of sex offenses as set forth below.
- C. Conviction for an offense under this chapter shall not prohibit the victim from bringing a civil action for damages.

10-1-2. DEFINITIONS.

- A. “Child pornography” means any visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, photograph, film, video, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct depicting a minor engaging in obscene and sexually explicit conduct or an image that is, or appears to be, of a minor engaging in obscene and sexually explicit conduct and such depiction lacks serious literary, artistic, political, or scientific value.
- B. “Consent” means the knowing and voluntary agreement of two or more individuals, each of whom is sixteen (16) years of age or older and otherwise capable of understanding the nature and consequences of such agreement, to commit some act.
- C. “Conspiracy” means a secret agreement, plan, or plot of two or more Persons to perform together some act that would if committed, constitute an offense pursuant to this Code.
- D. “Crime” means an act or omission forbidden by law and for which, upon conviction, a sentence of imprisonment or a fine is authorized.
- E. “Enticement” means the act of enticing, seducing, luring, or attempting to persuade another Person to enter any vehicle, building, room, or other secluded place with the intent of committing a sex offense.
- F. “False imprisonment” means the act of intentionally confining or restraining of another Person without the victim’s consent; and with knowledge that he or she has no lawful authority to do so.
- G. “Force” means the use of physical force or violence or the use of threats, including threats to use physical force or violence against the victim or another when the victim believes that there is an ability to execute such threats.
- H. “Indecent exposure” means the intentional exposure of portions of the body or of the whole body, especially of the genitals, in a public place in a way considered offensive to others and in order to satisfy a sexual urge.
- I. “Interstate” refers to travel through or from one state jurisdiction to that of another state, from a tribal jurisdiction to that of a state, or from a state jurisdiction to that of a tribe.
- J. “Kidnapping” means the unlawful taking, restraining, transporting, or confining of another by force, intimidation or deception with the intent that the victim be held for ransom, as a hostage or shield; or forced into labor or service; or to inflict death, physical injury, or a sex offense upon the victim.

- K. “Minor” means any person under the age of eighteen (18) years of age.
- L. “Person” means any individual over the age of eighteen (18) years over whom the Tribe has criminal jurisdiction
- M. “Possession” means the act of having or taking into one’s control.
- N. “Prostitution” means the knowing offer or commission of an exchange of sexual conduct for money or other valuable consideration.
- O. “Rape” means a sexual act with another by force or threat and without the consent of the victim or a sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate.
- P. “Receipt” means to actually receive, come into possession of, or physically acquire some tangible object.
- Q. “Sexual conduct” means any act of masturbation, sexual intercourse, sexual contact, indecent exposure, or other act meant to satisfy sexual urges.
- R. “Sexual contact” means the unlawful and intentional touching or applying pressure to the intimate body parts or the unlawful and intentional causing of another person to touch one’s own intimate body parts, whether such contact is direct or over the clothing.
- S. “Sex offense” means an act which involves sexual conduct or sexual contact and constitutes an offense pursuant to Chapter 10, Sections 7 or 8 of this Code.
- T. “Sexual performance” means any play, motion picture, photograph, dance or other visual representation that involves sexual conduct exhibited before an audience.
- U. “Solicitation” means the act of offering money or something else of value in order to incite or induce another to commit a crime with the specific intent that the person solicited commit the crime. In the case of minor, solicitation shall include any direction, request, enticement, persuasion or encouragement of a minor to commit or participate in an act that constitutes a crime with the specific intent that the minor commit or participate in such act.
- V. “Threat” means a statement or action indicating that a person intends to inflict physical violence and bodily harm on another person where that other person has reason to believe such statement or action is imminent and possible.
- W. “Tribal jail”. In this Chapter and throughout the entirety of the Tribal Code, “Tribal Jail,” “Tribal jail” or “tribal jail” means any detention or correctional facility in which the Mescalero Apache Tribal Court, or Reservation Law Enforcement, detains or incarcerates or causes to be detained or incarcerated individuals under its jurisdiction.
- X. “Video voyeurism” means intentionally using a video camcorder, camera, webcam, or other device capable of taking video, film, webcast, or other visual record whether for live broadcast or later viewing, to view the intimate parts of another Person’s body without the knowledge and consent of such other Person under circumstances where that person has a reasonable expectation of privacy, whether in a public or private place.

10-1-3. LIMITATIONS OF ACTIONS. No complaint shall be filed charging the commission of an offense unless such an offense shall have been committed within one (1) year immediately prior to the filing of the Complaint unless the complainant first gains or should have gained knowledge of such an offense within a period of one (1) year prior to filing of the complaint. In the event the person charged with the offense is absent from the jurisdiction of the Mescalero Apache Indian reservation, the period of absence shall not be computed for the time is gone.

10-1-4. REFUSING AID TO AN OFFICER. Any able bodied person who shall neglect or refuse, when called upon by any Law Enforcement Officer to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment or labor for a period not to exceed one hundred eighty (180) days or to a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine, with costs.

10-1-5. FUGITIVES. Any person who is a fugitive from justice and is wanted by any Court of competent jurisdiction, including other Indian Tribal Courts, upon application to Tribal Court, may be apprehended by Reservation Law Enforcement Officers and held in custody pending a hearing to determine if he should be turned over to the authorities who seek him.

10-1-6. ACCESSORY. A person may be charged with and convicted of the crime as an accessory if he procures, counsels, aids, or abets in its commission, although he did not directly commit the crime and although the principal who directly committed such crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has been acquitted or is a child under the Juvenile Offenses.

10-1-7. TESTIMONY OF SPOUSE IN CRIMINAL PROCEEDING. The husband or wife of a defendant in any criminal investigation, proceeding, preliminary hearing or trial is a competent witness to testify in favor of, but not against, such defendant; provided, that if willing, the husband or wife of a defendant may testify against the defendant without the defendant's consent where the prosecution is for any of the following crimes: incest, bigamy, unlawful cohabitation, abandonment of dependents, or any unlawful violence forcibly committed or attempted against the spouse testifying, or the children of both or either of the parties.

10-1-8. DISOBEDIENCE TO LAWFUL ORDERS OF THE COURT. Any person who shall willfully disobey any Order, Subpoena, Warrant or Command duly issued, made or given by the Mescalero Apache Tribal Court, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-1-9. SENTENCES. All sentences imposed in this chapter 10 shall be for a period of time of labor and imprisonment in the Tribal Jail or for a monetary fine, or both.

10-1-10. PENALTIES. If, for any reason, a penalty has not been prescribed, or such prescription is void, then such crime shall have a penalty of labor or imprisonment for a period not to exceed ninety (90) days or a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or both in appropriate cases.

10-1-11. MENTAL HEALTH COUNSELING OR THERAPY AS SENTENCE. Any individual convicted of a criminal offense MAY, at the discretion of the Court, be ordered to participate in mental health counseling or therapy in addition to those sentences provided herein where:

- A. Such individual may have acted as a result of an emotional, behavioral, mental, or psychological disorder or disease; or
- B. Mental health counseling or therapy may result in the decreased risk of future criminal actions; and

10-1-12. TRADITIONAL OR CULTURAL ACTIVITIES AS SENTENCE. At the Court's discretion, any individual convicted of a criminal offense MAY, with the consent of Defendant, be ordered to attend or participate in traditional or cultural activities in addition to those sentences provided herein.

SECTION 2. ASSAULT AND BATTERY.

10-2-1. CONSPIRACY. If two or more persons conspire, either to commit any offense enumerated in this Code, against the Mescalero Apache Tribe or any other person, or to defraud the Mescalero Apache Tribe, or any branch thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be sentenced to labor or imprisonment for a period of one hundred eighty (180) days or a fine of Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine, with costs, in extreme or habitual cases.

10-2-2. ASSAULT. Any person who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of assault and upon conviction thereof, shall be sentenced to labor or imprisonment for a period of not to exceed twenty-five (25) days or to a fine not to exceed Fifty Dollars (\$50.00), or both such imprisonment and fine, with costs, and may be required to furnish satisfactory bond to keep peace.

10-2-3. ASSAULT AND BATTERY. Any person who shall willfully strike another person or otherwise inflict bodily injury, or shall, by offering violence, cause another to harm himself, shall be deemed guilty of assault and battery, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-2-4. VIOLENCE TO A TRIBAL OFFICER. Any person within the Mescalero Apache Reservation who shall willfully or knowingly, by written or oral communication or otherwise, threaten to take the life of or inflict bodily harm upon any elected or appointed officer of the Mescalero Apache Tribe or any Tribal Judge, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to one hundred eighty (180) days or a fine of Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

SECTION 3. KIDNAPPING AND FALSE IMPRISONMENT.

10-3-1. KIDNAPPING. Any Person who shall kidnap another individual shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed three hundred sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-3-2. FALSE ARREST. Any Person who shall without probable cause willfully and knowingly make or cause to be made, the unlawful arrest, detention or imprisonment of another Person, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed three hundred sixty-five (365) days plus Court costs, or a fine not to exceed Five Thousand Dollars (\$5,000.00) plus Court costs, or both such imprisonment and fine in extreme or habitual cases.

10-3-3. FALSE IMPRISONMENT. Any Person, whether parent or non-parent, who shall falsely imprison another individual shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed three hundred (365) days and a fine not to exceed Five Thousand Dollars (\$5,000.00) plus Court costs.

SECTION 4. CRIMES AGAINST CHILDREN AND DEPENDENTS.

10-4-1. CONTRIBUTING TO THE DELINQUENCY OF A MINOR. Any person who shall willfully contribute to the delinquency of a minor, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-4-2. PATERNITY. Any male person who has sexual intercourse with an unmarried woman and as a result thereof, she becomes pregnant and delivers a child, shall be deemed to have committed an offense and upon conviction thereof, shall be ordered by the Court to pay a sum of money that may be determined

by the Court for support, education, and maintenance of the child until he attains the age of eighteen (18) years.

10-4-3. FAILURE TO SUPPORT DEPENDENT PERSONS. Any person who shall refuse or neglect to furnish food, shelter or care, or abandon those dependent upon him, including any dependent children born out of wedlock, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases. It shall be mandatory that prior to sentencing the Court shall order a pre-sentencing investigation by the B.I.A. Social Services Branch and obtain a report containing recommendations to the Court. The Court may in its discretion award custody of dependents to any responsible person, or tribal, county, state or federal agency, and require the offender to contribute to the support of said dependent person or persons, and may appoint a guardian of the person or estate of said dependents temporarily pending final determination of the case or permanently after hearing recommendations.

SECTION 5. WEAPONS, EXPLOSIVES AND FIRES.

10-5-1. UNLAWFUL CARRYING OF A DEADLY WEAPON. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

- A. in the person's residence or on real property belonging to him as owner, lessee, tenant or licensee; or
- B. in a private automobile or other private means of conveyance, for lawful protection of the person or another person or property, while traveling; or
- C. by a peace officer in the lawful discharge of his duties.
- D. when lawfully hunting small or big game on the Mescalero Apache Reservation.

Nothing in this Section shall be construed to prevent the carrying of any unloaded firearm. Any person who commits unlawful carrying of a deadly weapon is guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-5-2. NEGLIGENT USE OF A WEAPON. Any person who shall unlawfully discharge a firearm in the proximity of a building, or into any building or vehicle so as to knowingly endanger a person or his property, carries a firearm while under the influence of an intoxicant or narcotic, or endangers the safety of another or his property by handling or using a firearm or other deadly weapon in a negligent manner, shall be guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-5-3. MINORS CARRYING FIREARMS. No person under the age of fourteen (14) years of age shall carry any firearm on his person at any time unless he shall be accompanied by an adult or be engaged in or participating in a supervised firearms program. The parent or guardian of any person violating this Section shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-5-4. FIREWORKS AND DANGEROUS EXPLOSIVES.

- A. Any person who shall possess, discharge, sell, offer to sell, or own any firecracker, roman candle, skyrocket, torpedo bomb, blank cartridge or any other type or form of explosive commonly known as "fireworks" and non-hunting types of ammunition of any type or class, or know of any

type of explosive, bomb or grenade, not used for traditional or ceremonial purposes shall be deemed guilty of an offense.

- B. The term "fireworks" shall not include cap pistols, toy guns or other devices in which paper caps containing twenty-five hundredths (25/100ths) grains or less of explosive compound are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for use.
- C. If found guilty by the Tribal Court and upon conviction thereof, any person shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases.
- D. In the event that a minor is involved, the legal parents and/or guardian shall be held fully responsible for the penalties as herein enumerated and shall be held to be fully responsible for all actions taken by the minors leading up to the offense whether or not the parents or legal guardian were aware of the minor's actions.

10-5-5. SETTING FIRES. Any person who willfully or negligently kindles or causes to be kindled, any fire within the Mescalero Apache Reservation, and leaves it un-quenched or who negligently or carelessly without full precaution to prevent fire from spreading, permits it to spread beyond his control so as to present danger to property or life, or is a party to the foregoing, and whether such fire is kindled on his own land or finding any uncontrollable fire burning, fails to give immediate warning and to make reasonable attempts to quench and control it; or who is guilty of disobedience to the lawful Order of any public official or fireman attempting to control such fire, or who interferes with any such officer in any such case, or who refuses to assist in controlling such fire, or who persuades or attempts to persuade others to do any of the foregoing, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period of not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-5-6. CONFISCATED WEAPONS OR MATERIAL. Reservation Law Enforcement Officers may confiscate weapons, or other items used to perpetrate a crime, or any dangerous weapon used in any manner which endangers the life or property of another. Any item seized pursuant to this Section is deemed forfeited by the owner and is to be sold at public auction. The Reservation Law Enforcement Office may obtain any weapon suitable for police training or police work by making a request in writing to the Tribal Court prior to the auction. The auction will be conducted once a year by the Mescalero Apache Tribal Court and the proceeds disposed of as follows:

- A. To pay expenses of the sale, including such fee as the Court shall direct to be paid directly into the Tribe's General Fund.
- B. The remainder shall be paid directly into the Tribe's General Fund.

SECTION 6. NUISANCES.

10-6-1. MAINTAINING A PUBLIC NUISANCE. Any person who shall act in such a manner or permit his tribal property to be in such condition or to be used in such a manner as to injure or endanger the safety, health, comfort or property of his neighbors, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period of not to exceed fifty (50) days or to a fine not to exceed One Hundred Dollars (\$100.00), or both such imprisonment and fine with costs and may be required to remove such nuisance when so ordered by the Court, or repair the same as ordered by the Court.

10-6-2. LITTERING.

- A. A person who shall deposit, discard or abandon any unwanted property including, but not limited to, garbage, refuse, bottles, cans, old vehicles or any other form of solid waste in any place on the Mescalero Apache Indian reservation with the exception of designated refuse disposal containers or areas, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed fifty (50) days or a fine not to exceed One Hundred Dollars (\$100.00), or both.
- B. This offense shall not be applied to enrolled members of the Mescalero Apache Tribe following the tribal custom and tradition of discarding items of clothing in the woods.

10-6-3. COMMUNICABLE DISEASE. Any person suffering from any communicable disease may be, upon Order of the Court certified by the Public Health Service Hospital, apprehended by Reservation Law Enforcement Officers and isolated at such a place or such a time until such disease is certified to be brought under control in a written certification by the Public Health Service to be delivered to the Court.

10-6-4. PUBLIC DEFECATION. Any person who shall urinate or defecate in any public place, lake, stream, or domestic water supply shall be guilty of an offense and upon conviction thereof, shall be sentenced for a period not to exceed thirty (30) days or a fine not to exceed Fifty Dollars (\$50.00), or both.

SECTION 7. SEX OFFENSES.

10-7-1. FORNICATION. Any Person who shall have sexual intercourse with another person, neither of such persons being married, shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed thirty (30) days plus Court costs or a fine not to exceed Sixty Dollars (\$60.00) plus Court costs, or both such imprisonment and fine plus costs, in extreme or habitual cases.

10-7-2. INDECENT LIBERTIES. Any Person who performs any acts of deviant sexual conduct or any lewd fondling or touching with the intent to arouse or satisfy sexual desire, with a person not that person's spouse, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days plus Court costs or a fine of Three Hundred Sixty Dollars (\$360.00) plus Court costs, or both such imprisonment and fine plus costs in extreme or habitual cases.

10-7-4. ASSAULT WITH INTENT TO COMMIT RAPE. Any Person who shall assault another with the intent to commit rape shall be deemed guilty of an offense and upon conviction thereof may be sentenced to labor or confinement for a period not to exceed three hundred sixty-five (365) days plus Court costs or to a fine not to exceed Five Thousand Dollars (\$5,000.00) plus Court costs, or both such imprisonment and fine plus costs in extreme or habitual cases.

10-7-5. RAPE. Any Person who shall commit rape shall be deemed guilty of an offense and upon conviction may be sentenced to confinement for a period of three hundred sixty-five days (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-7-6. GIVING OF VENEREAL DISEASE TO ANOTHER. Any Person who shall infect another person with a venereal disease knowing himself or herself to be infected, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days plus Court costs or a fine not to exceed One Thousand Dollars (\$1,000.00) plus Court costs, or both such imprisonment and fine plus costs, in extreme or habitual cases. The Mescalero Apache Tribal Court shall have authority to order and compel the medical examination, treatment, and a medical confinement if necessary, of any Person found to be afflicted with any communicable disease of this nature.

10-7-7. PROSTITUTION. Any Person who shall practice prostitution or shall solicit or procure for the purposes of practicing prostitution or shall knowingly keep, maintain, rent or lease any house, room, tent,

or any other place for the purposes of prostitution, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days plus Court costs or a fine of Three Hundred Sixty Dollars (\$360.00) plus Court costs, or both such imprisonment and fine plus costs in extreme or habitual cases.

10-7-8. AGGRAVATED SEXUAL ABUSE. Any person who shall commit a sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate due to mental incompetence or some other reason shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to confinement for a period of three hundred sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-7-9. INDECENT EXPOSURE. Any Person who shall commit indecent exposure shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to confinement for a period of one hundred eighty (180) days and a fine of One Thousand Dollars (\$1,000.00) plus Court costs.

10-7-10. SEX TRAFFICKING BY FORCE, FRAUD OR COERCION. Any Person who shall knowingly: a) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains or maintains by any means another person; or b) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the act described at (a) above; knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion will be used to cause the person to engage in criminal sexual conduct shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to confinement for a period of three hundred days and a fine of Three Thousand Dollars (\$3,000.00) plus Court costs. Section 10-8-7 herein shall apply in the case that such offense involves a minor.

10-7-11.REMOVAL OF NON-TRIBAL SEX OFFENDERS. Any Non-Tribal member who shall commit an offense similar to those described in Sections 7 and 8 of this Chapter, may be subject to permanent removal from the Mescalero Apache Indian Reservation in accordance with Article XI, Section 1(p) of the Mescalero Apache Tribe's Revised Constitution and Sections 10-18-1 and 10-18-2 of this Code.

10-7-12. SEX OFFENDER REGISTRY. Additional penalties for convictions under Sections 7 and 8 of this Chapter, are mandatory and are found in Chapter 33, "Sex Offender Registry Code.

SECTION 8. SEX OFFENSES AGAINST MINORS.

10-8-1. FALSE IMPRISONMENT OF A MINOR FOR PURPOSES OF CARRYING OUT A SEX OFFENSE. Any Person who shall falsely imprison a minor for purposes of carrying out a sex offense with such minor shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred and sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-2. VIDEO VOYEURISM OF A MINOR. Any Person who shall commit video voyeurism of a minor shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period of three hundred and sixty (365) days and a fine Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-3. POSSESSION OR RECEIPT OF CHILD PORNOGRAPHY. Any Person who shall possess or receive child pornography shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred sixty-five (365) days and a fine not to exceed Five Thousand (\$5,000.00) plus Court costs.

10-8-4. DISTRIBUTION OR PRODUCTION OF CHILD PORNOGRAPHY. Any Person who shall distribute, produce, reproduce, mail, transport, advertise, solicit, or offer child pornography shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period

of three hundred and sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-5. USE OF MINORS IN PROSTITUTION. Any Person who shall engage in the use minors in prostitution, including solicitation of a minor to engage in prostitution, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred and sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-6. ENTICEMENT OR SOLICITATION OF A MINOR. Any Person who shall entice or solicit a minor to engage in sexual activity shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred and sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-7. SEXUAL CONTACT WITH MINORS.

- A. Any Person who shall engage in sexual contact with a minor between thirteen (13) years of age and eighteen (18) years of age, and who is more than two (2) years older than said minor, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred sixty-five (365) days and a fine not to exceed Five Thousand Dollars (\$5,000.00) plus Court costs.
- B. Any Person who shall engage in sexual contact with a minor under the age of thirteen (13) shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred and sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-8. USE OF A MINOR IN SEXUAL PERFORMANCE. Any Person who shall engage in the use of a minor in a sexual performance by performing with or otherwise participating in, promoting, advertising, making a recording of, or causing such sexual performance shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-9. TRANSPORTING A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY. Any Person who shall knowingly transport a minor in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the minor engage in prostitution, or in any criminal sexual activity shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period of three hundred sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

10-8-10. SEX TRAFFICKING OF A MINOR. Any Person who shall commit an act described in Section 10-7-10 herein, where such act involved a minor, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a period three hundred sixty-five (365) days and a fine of Five Thousand Dollars (\$5,000.00) plus Court costs.

SECTION 9. MARITAL AND FAMILIAL OFFENSES.

10-9-1. ADULTERY. Any Person who shall have sexual intercourse with another Person, either of such Persons being married to a third Person, shall be deemed guilty of adultery and upon conviction thereof, may be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days with Court costs or a fine not to exceed Three Hundred Sixty Dollars (\$360.00) plus Court costs, or both such imprisonment and fine plus costs, in extreme or habitual cases.

10-9-2. ILLICIT COHABITATION. Any Person who shall live or cohabit with another as husband and wife and has not been married according to the method prescribed by this Code, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days plus Court costs or a fine not to exceed Three Hundred Sixty

Dollars (\$360.00) plus Court costs, or both such imprisonment and fine plus costs in extreme or habitual cases.

10-9-3. UNLAWFULLY COMPELLING MARRIAGE. Unlawfully compelling marriage consists of any Person by force, menace or duress compelling a male or female to enter into marriage with him or her or any other Person. Whoever commits unlawfully compelling marriage shall be sentenced for a period not to exceed one hundred eighty (180) days plus Court costs or a fine not to exceed Three Hundred Sixty Dollars (\$360.00) plus Court costs, or both.

SECTION 10. DRUG ABUSE.

10-10-1. SNIFFING. Any person who shall intentionally inhale fumes of gas, ether, glue, paint, or any other substance for the purpose of becoming dizzy, or to come under the effects of said articles or substances to distort or alter the mind or perception, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-10-2. DRUG ABUSE. Any person who shall manufacture, cultivate, grow, possess, sell, administer, give, dispense or otherwise have under this control, any drug classified as a narcotic drug by any federal health agency or any form of cannabis including, but not limited to, those substances known as marijuana, Indian hemp, hashish or synthetic form of same or drugs, peyote or any other drug designed and intended to alter the mind and perception of the person taking same and said person not having a prescription from a duly licensed doctor or dentist, to take and possess same, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-10-3. TREATMENT AND REHABILITATION. The Court finding any one guilty of sniffing or any offense under this Section, shall make a mandatory post-sentencing investigation and have the right to send this person to any competent person for treatment, rehabilitation, confinement, and care in connection with the use of these substances.

SECTION 11. CRIMES AGAINST REPUTATION.

10-11-1. LIBEL AND SLANDER. Any person who shall knowingly, falsely and maliciously communicate or spread any falsehood concerning another person either orally or in writing shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both such imprisonment and fine in extreme or habitual cases.

SECTION 12. TRESPASS.

10-12-1. TRESPASS. Any person who shall go upon or pass over any tribally assigned, cultivated, or other lands of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or shall willfully and knowingly allow livestock to occupy or graze upon the cultivated or other lands of another person, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed fifty (50) days or a fine not to exceed One Hundred Dollars (\$100.00), or both such imprisonment and fine with costs, in extreme or habitual cases. In addition, he may be required to pay damages for the benefit of the injured party.

10-12-2. CRIMINAL TRESPASS.

A. Criminal trespass consists of unlawfully, and with malicious intent, entering or remaining upon the lands of another, knowing that such consent to enter or remain is denied or withdrawn by the

owner or occupant thereof.

- B. Criminal trespass also consists of unlawfully and with malicious intent, entering or remaining upon lands owned, operated or controlled by the Tribe, knowing that consent to enter or remain is denied or withdrawn by the custodian thereof. Whoever commits criminal trespass upon conviction thereof shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-12-3. UNAUTHORIZED LEASING. Any person who leases land without first obtaining written approval from the Mescalero Apache Tribe shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

SECTION 13. PROPERTY DAMAGE.

10-13-1. CRIMINAL DAMAGE TO PROPERTY. Criminal damage to property consists of intentionally damaging any real or personal property of another without the consent of the owner of the property. Whoever commits criminal damage to property upon conviction thereof shall be sentenced for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both.

10-13-2. MALICIOUS MISCHIEF. Any person who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-13-3. CUTTING TIMBER WITHOUT A PERMIT. Any person who without first securing a proper permit, cuts any standing timber from tribal lands, which said timber is to be sold or transported off the Mescalero Apache Reservation, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases. No timber cutting shall be allowed within one-half (1/2) mile of Reservation roads improved or unimproved, and to do so shall be subject to violation of this Section.

10-13-4. WASTER OF NATURAL RESOURCES. Any Indian who kills, traps, or catches any wild horses, or more game or fish than needed for his own personal use and consumption or the use and consumption of his family, or any person who leaves the carcass of any game, animal, or fish and does not remove same as soon as possible after killing, trapping or catching same, or any person who wastes, allows to rot and decay, or fails to remove as soon as possible after cutting any timber except in emergency cases, or any person who shall divert any ground water or surface water without first receiving written permission from the Mescalero Tribal Council, or any person who knowingly introduces any object or substance into any body of water causing it to be offensive or dangerous or potentially offensive or dangerous for human or animal consumption or use, or any person who uses any lands for cultivation or grazing without first making plans or provisions for the rotation and/or re-growth of said lands, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases. This Section shall be controlled by the annual Hunting and Fishing Proclamation issued by the Tribal Council.

10-13-5. INJURY TO PUBLIC PROPERTY. Any person who shall without proper authority, use, transfer, sell, misappropriate, or encumber or injure any public, government or tribal property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-13-6. HUNTING AND FISHING VIOLATIONS. Any person who shall violate any rule, law or resolution adopted by the Tribal Council setting requirements for and governing, hunting, trapping, or fishing on the Mescalero Apache Reservation shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced pursuant to Chapter 15, Hunting and Fishing, of this Code.

10-13-7. UNLAWFUL SALE OF NATURAL RESOURCES. Any person who is permitted by permit or otherwise to take and use any natural resources for personal use that belong to or are controlled by the Tribe, and who sells them commercially, is guilty of an offense and upon conviction thereof, shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-13-8. ACCOMPANYING UNAUTHORIZED PERSONS. Any tribal member not engaged in tribal business, who accompanies, takes, or transports any unauthorized Non-Tribal member to any area within the Mescalero Apache Reservation for the purposes of hunting or fishing shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both such imprisonment and fine with costs, in extreme or habitual cases. It shall be deemed prima facie evidence of hunting or fishing if the parties have in their possession or in their vehicle, weapons and equipment which would enable them to hunt or fish. Any authorized tribal official shall take into possession any weapon or equipment which may be used for hunting or fishing, possessed by the apprehended person and/or their companions. Said weapon and equipment shall be turned over to the Clerk of the Tribal Court as evidence.

10-13-9. UNLAWFUL DISPOSITION OF TRIBAL PROPERTY. Any Indian who sells or buys, or in any way disposes of or acquires livestock branded with the ID or Reservation brand, or other Tribal property, or the increase thereof, without the proper permit, or any Trust, Tribal or reimbursable property in violation of the Government regulations, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period of twenty-two and one-half (22 1/2) days, or a fine of Forty-five Dollars (\$45.00) for the first offense, or both such imprisonment and fine with costs; or for a period of forty-five (45) days or a fine of Ninety Dollars (\$90.00) for the second offense, or both such imprisonment and fine with costs; or a maximum punishment of not to exceed ninety (90) days or a fine of One Hundred Eighty Dollars (\$180.00) or both such imprisonment and fine with costs, in extreme or habitual cases.

SECTION 14. THEFT.

10-14-1. EMBEZZLEMENT. Any person who shall, having lawful custody of property not his own, appropriate, or cause to be appropriated, the same to his own use, or the use of another, with intent to deprive the owner thereof, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both such imprisonment and fine with costs, in extreme or habitual cases.

10-14-2. EXTORTION. Any person who shall willfully, by making false charges against another person, or by any other means whatsoever, extort or attempt to extort money, goods, property, or anything else of value, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-14-3. FORGERY. Any person who shall, with intent to defraud, falsely sign, execute or alter any written instrument, or without authority sign the name of another, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-14-4. FRAUD. Any person who shall by willful misrepresentation or deceit, or by false interpretation, or by use of false weights or measures, or other artifice, obtain any money or other property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-14-5. RECEIVING STOLEN PROPERTY. Any person who knowingly receives, purchases or conceals or aids in concealing or receiving any property, knowing the same to be stolen, or having reason to believe it is stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-14-6. SHOPLIFTING. Any person who shall willfully take possession of any goods, wares, or merchandise offered for sale without paying the purchase price thereof, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period of not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both.

10-14-7. DRAWING OR UTTERING INSTRUMENTS WITHOUT FUNDS. Any person who with intent to cheat and defraud, shall obtain, or attempt to obtain, from any other person or persons any money, property, or valuable thing whatever, by means or by use of any trick or deception or false or fraudulent representation or statement or pretense, or by any other means or instrument or by use of any false or bogus check, or by any other printed, written or engraved instrument or spurious coin or metal, shall be sentenced to labor or imprisonment of not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-14-8. DISPOSING OF PROPERTY OF AN ESTATE. Any person who sells, trades or otherwise disposes of any property of an estate before the determination of the heirs without proper authority with the intent to defraud other persons who may be entitled to share in the proceeds of said estate, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed ninety (90) days or a fine of One Hundred Eighty Dollars (\$180.00), or both.

10-14-9. LARCENY. Any person who steals anything of value which belongs to another is guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed 365 days or a fine of not to exceed \$5,000.00, or both.

10-14-10. PSYCHIATRIC TREATMENT. At the discretion of the Tribal Court, anyone convicted of a violation of this Section may, as a part of the sentence, be committed to the health-care program for psychiatric care and treatment.

SECTION 15. ANIMALS.

10-15-1. SLAUGHTERING LIVESTOCK. Any person who shall slaughter livestock shall be required, upon demand by lawful authority, to produce a permit for the hide from said carcass or to give satisfactory proof as to where the meat was obtained. Any person convicted of violating this Section shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-15-2. UNATTENDED HORSES AND LIVESTOCK.

- A. Any person who shall permit his horses or other livestock to be loose or unattended on the highway right-of-way or in any residential or public area within the Mescalero Apache Reservation shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed sixty (60) days or a fine not to exceed One Hundred Twenty Dollars (\$120.00), or both.
- B. It shall be unlawful for any resident grazing livestock on his or her assignment or having open

range surrounding his residence, to fail to close any access gate to Highway 70, unless his driveway and residence are fenced to preclude livestock from entering the highway right-of-way.

- C. Each time a gate, is found open (where the driveway and residence is not fenced), shall constitute a separate offense.

10-15-3. PENALTY. Violators shall be fined Five Dollars (\$5.00) for a first offense and Ten Dollars (\$10.00) for each additional offense.

10-15-4. CRUELTY TO ANIMALS. Any person who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed thirty (30) days or a fine not to exceed Sixty Dollars (\$60.00), or both.

10-15-5. FAILURE TO REMOVE INFECTIOUS OR CULL ANIMALS. Any person who shall willfully refuse to dispose of cull or infectious animals in accordance with instructions received from lawfully constituted authority, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed ninety (90) days or a fine of One Hundred Eighty Dollars (\$180.00), or both.

10-15-6. EXCEEDING STOCK QUOTAS. Any person who violates any tribal regulation or ordinance limiting the number of livestock to be grazed in any particular designated area shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed ninety (90) days or a fine of One Hundred Eighty Dollars (\$180.00), or both.

10-15-7. MISBRANDING. Any person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-15-8. BUTCHERING. Any person who shall butcher stock belonging to another with the intent to deprive such owner thereof shall be guilty of the offense of butchering and upon conviction thereof shall be sentenced to jail for a period not to exceed six (6) months, or a fine not less than \$500.00, or both the jail sentence and fine.

10-15-9. ABANDONMENT OF CATS AND DOGS. Any person who shall willfully abandon small domesticated animals, which shall include, but not be limited to dogs and cats, within the boundaries of the Mescalero Apache Reservation, or who causes or procures the same shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed thirty (30) days, or ordered to pay a fine not to exceed \$60.00, or both jail sentence and fine, and costs.

10-15-10. FAILURE TO TREAT DISEASED ANIMALS. Any person who willfully refuses to dip, spray, destroy, or treat diseased animals according to regulations when so directed by the Superintendent of the Reservation, or his authorized representative, or the Tribal government, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period not to exceed thirty (30) days, or a fine not to exceed \$60.00, and costs, or both the jail sentence and fine, and costs.

SECTION 16. CRIMES AGAINST PUBLIC PEACE.

10-16-1. DISTURBING THE PEACE. Any person who shall in a public or private place, disturb or annoy any lawful assembly, or who shall engage in any other act of public indecency or immorality, or shall commit any other acts to interfere with the peace of any other person or persons, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-16-2. INTOXICATION. Any person who shall become intoxicated or who as a result of being under the influence of alcoholic liquors has no control of himself or is unable to attend to and care for his own

welfare and safety shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-16-3. PEDDLING AND SOLICITING. Any person who is not a member of the Mescalero Apache Tribe and who shall peddle, sell, vend, or solicit or offer for sale any items whatsoever, not having first obtained a permit or license to do so issued by the Mescalero Apache Tribe shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00) or both.

10-16-4. CURFEW.

A. GENERAL. Children who have not reached their eighteenth (18th) birthday shall not be any place other than their usual place of abode between the hours of 10:00 P.M. and 6:00 A.M. on nights preceding regular school days and between the hours of 1:00 A.M. and 6:00 A.M. other nights except in the following circumstances:

1. When accompanied by a parent or guardian or other responsible person over the age of eighteen (18) years who has permission from the parent or guardian of the child.
2. When returning home, without delay or loitering, from a community activity or from a neighbor's house attended with the permission of his parent or guardian or when returning from a community sponsored or school sponsored activity.
3. When attending traditional activities of the Tribe.

B. PENALTIES:

1. Any person under the age of eighteen (18) years who shall violate this Code shall be deemed not to be receiving proper care within the meaning of the Juvenile Code and an action may be taken under the Juvenile Code.
2. Any person being the parent or legal guardian of any child under the age of eighteen (18) years, who willfully or negligently permits such child to violate this Code, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.
3. Any non-Indian under the age of eighteen (18) years who shall violate this Code shall be delivered to appropriate state or federal officials. Any non-Indian parent or legal guardian of a child under the age of eighteen (18) years, who shall negligently or willfully permit such child to violate this Code, may, along with such child, be excluded from tribal land after notice and hearing substantially in accord with that found in Chapter 11, Section 8. Provided, however, that should the Tribe be granted criminal jurisdiction over non-Indians, then the Tribal Court may exercise jurisdiction over them.

10-16-5. LOITERING OF MINORS. Loitering of minors consists of:

- A. The owner or operator of any saloon permitting a person under the age of twenty-one (21) years to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of the person; or
- B. The owner or operator of any poolroom permitting a person under the age of majority to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of the person. Whoever commits loitering of minors upon conviction thereof, shall be sentenced for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both.

10-16-6. INTERFERENCE WITH MEMBERS OF STAFF, PUBLIC OFFICIALS OR THE GENERAL PUBLIC, TRESPASS, DAMAGE TO PROPERTY, MISDEMEANORS, PENALTIES.

- A. No person shall, at or in any building, or other facility or property owned, operated or controlled by the Tribe willfully deny to staff, tribal officials or the general public:
 - 1. Lawful freedom of movement within the building or facility or the land on which it is situated;
 - 2. Lawful use of the building or facility or the land on which it is situated; or
 - 3. The right of lawful ingress and egress to the building or facility or the land on which it is situated.
- B. No person shall, at or in any building or other facility or property owned, operated or controlled by the Tribe, willfully impede the staff or a tribal official or a member of the general public through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened.
- C. No person shall willfully refuse or fail to leave the property of, or any building or other facility owned, operated or controlled by the Tribe when requested to do so by a lawful custodian of the building, facility or property if the person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of the property, building or facility.
- D. Nothing in this Section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute. Whoever commits interference in violation of this Section, upon conviction thereof, shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both.

10-16-7. BOMB SCARES UNLAWFUL. Making a bomb scare consists of falsely and maliciously stating to another that a bomb or other explosive has been placed in such a position that property or persons are likely to be injured or destroyed. Whoever commits bomb scares, upon conviction thereof, shall be sentenced to a period not to exceed thirty (30) days or a fine not to exceed Fifty Dollars (\$50.00), or both.

10-16-8. PUBLIC AFFRAY. Public affray consists of two (2) or more persons voluntarily or by agreement engaging in any fight or using any blows or violence toward each other in an angry or quarrelsome manner in any public place, to the disturbance of others. Whoever commits public affray, upon conviction thereof, shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-16-9. UNLAWFUL ASSEMBLY. Unlawful assembly consists of three (3) or more persons assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose. Whoever commits unlawful assembly, upon conviction thereof, shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-16-10. RIOT CONTROL, SHORT TITLE. This Section may be cited as "Riot Control."

- A. **PROCLAMATION OF EMERGENCY.** Upon request of a majority of the members of the Tribal Council and after finding that a public disorder, disaster or emergency which affects life or property exists in the Reservation, the Tribe's President may proclaim a state of emergency in the area affected.
- B. **EMERGENCY RESTRICTIONS.**
 - 1. During the existence of a state of emergency, the Tribe's President may, by proclamation,

prohibit:

- a. Any person being on the public streets, in the public parks or at any other public place during the hours proclaimed by the Tribe's President to be a period of curfew;
 - b. Any designated number of persons from assembling or gathering on the public streets, public parks or other open areas, either public or private, or in any public building;
 - c. The manufacture, transfer, use, possession or transportation of any device or object designed to explode or produce un-contained combustion;
 - d. The transportation, possession or use of combustible, flammable or explosive materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;
 - e. The possession of firearms or any other deadly weapon by a person in any place other than his place of residence or business, except for Reservation Law Enforcement Officers;
 - f. The sale, purchase, or dispensing of alcoholic beverages or other commodities or goods designated by the Tribe's President;
 - g. The use of certain streets or highways by the public; and
 - h. Other activities the Tribe's President reasonably believes should be prohibited to help maintain life, property, or the public peace.
2. Any proclamation issued under this Section becomes effective immediately upon its signing by the Tribe's President, but the Tribe's President shall give public notice of its contents. The restrictions may be imposed during times, upon conditions, with exceptions and in areas of the Reservation designated by proclamation of the Tribe's President from time to time.
- C. **TERMINATION OF EMERGENCY.** Any state of emergency proclaimed under the Riot Control Section, along with any restrictions imposed for control of that emergency, terminates automatically at noon on the third (3rd) day after it becomes effective unless sooner terminated by proclamation of the Tribe's President.
- D. **PENALTY.** Any person who, during a state of emergency, fails to comply with restrictions imposed by proclamation of the Tribe's President under the Riot Control Section, and upon conviction thereof, shall be sentenced for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both.
- E. **TRIBE'S PRESIDENT, POWERS NOT LIMITED.** The Riot Control Section does not limit any other power to maintain the public peace and safety which is vested in the Tribe's President.

10-16-11. FAILURE OR REFUSAL TO DISPERSE. Any person who shall fail or refuse to leave any assemblage which disturbs the peace, excites the public or injures persons or property after having been ordered to leave by an authorized police officer, or any person lawfully assisting such officer, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-16-12. DANCES.

- A. All dances of both public and private character shall terminate at 1:00 A.M., except when prior

authorization has been obtained in writing from the Tribal Council or Tribal President.

- B. Failure to terminate a dance at the scheduled hour shall subject a dance sponsor or instigators of a dance to a penalty of no more than thirty (30) days in jail, a Fifty Dollar (\$50.00) fine, or both.
- C. In the case of a non-Indian participant, failure to terminate a dance at the scheduled hour shall be deemed a proper cause for exclusion from the Reservation.
- D. The duly constituted law officers on the Mescalero Reservation shall have full power and authority to terminate any dance should it, in their judgment, become disorderly or go past the stated hour for closing.

10-16-13. GANG ACTIVITIES PROHIBITED, PENALTIES ENHANCED:

- A. Gang activities is any activities by a group or association of three or more persons that is defined as criminal offenses by tribal, federal, or state law involving non-Indians.
- B. Penalties Enhanced
 - 1. Any minor(s) deemed guilty of a crime involving gang activities shall be sentenced to a minimum of 1/2 of the maximum sentence for the crime committed by a minor(s) as established by the Mescalero Tribal Code.
 - 2. Any tool, instrument, weapon, firearm, or vehicle used in the commission of a crime involving gang activities shall be forfeited regardless of whether the perpetrator(s) has title to the tool, instrument, weapon, firearm, or vehicle at the time the crime is committed.
- C. If the gang activities include Non-Indian(s) the Mescalero Apache Tribe may proceed against the person and tools, instruments, weapons, firearms, and vehicle in the civil division of the Mescalero Tribal Court. Any tool, instrument weapon, firearm or vehicle for which an action is filed in the civil division of the Mescalero Tribal Court shall be held in custody of the B.I.A. Law Enforcement Services pending the final decision and Order of Disposition by the Tribal Court.

SECTION 17. GAMBLING.

10-17-1. GAMBLING. The Mescalero Apache Tribe shall have the sole proprietary interest in and responsibility for the conduct of any and all gaming operations conducted within the exterior boundary of the Mescalero Apache Indian reservation. Any person who participates in any game of chance, which is conducted within the exterior boundary of the Mescalero Apache Indian reservation, and which is not operated by the Mescalero Apache Tribe as authorized by the Mescalero Apache Tribal Council, to win money or other valuable consideration, or operates a place or device where a risk is take on a chance of winning money or other valuable property shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed thirty (30) days or a fine not to exceed Sixty Dollars (\$60.00), or both.

10-17-2. FORFEITURE OF PRIZE AND EQUIPMENT. Any gambling device or other equipment of any type used in a game of chance which is operated contrary to the provisions of §10-16-1 of the Mescalero Apache Tribal Code shall be seized by the Law Enforcement Officers discovering such device or equipment, and it shall be the duty of such officers to retain custody of the property seized until such property is disposed of by Order of the Tribal Court.

10-17-3. TESTIMONY OF WITNESSES TO GAMBLING. The Tribal Court or the Chief of the Reservation Law Enforcement Office of the Mescalero Apache Tribe inquiring into the alleged violation of any of the provisions of this Section, may subpoena persons and compel their attendance as witnesses and may compel such witnesses to testify concerning any violation of this Section. Any person who is subpoenaed and examined shall be immune to prosecution or conviction for any violation of this Section

about which he testifies. A conviction may be for any violation of this Section upon the unsupported testimony of any accomplice or participant.

SECTION 18. REMOVAL.

10-18-1. REMOVAL.

- A. Any Non-Member of the Mescalero Apache Reservation who resides on trust lands within the Mescalero Apache Indian reservation and commits one or more of the following acts, may be ejected from the Reservation by Order of the Tribal Council and barred from ever again residing on said Reservation lands.
- B. SPECIFIC GROUNDS FOR REMOVAL:
1. Unauthorized prospecting;
 2. Unauthorized mining, timber cutting, or other activity causing physical loss or damage of any nature to tribal property;
 3. Commission of a crime as defined by tribal, state or federal law;
 4. Immorality;
 5. Forcing entry into any Mescalero home without consent of the occupant or occupants;
 6. Interfering with or photographing, recording or interviewing Mescalero Apache Ceremonies without the permission of the parties involved and the Tribal Council;
 7. Unauthorized trading;
 8. Committing frauds, confidence games, or usury against the Mescalero people or inducing them into entering into grossly unfavorable contracts of any nature;
 9. Recruiting Mescalero labor for off-Reservation employment without prior permission of the Chairman of the Tribal Council and Superintendent;
 10. Defrauding any Mescalero of just compensation for his labor or service of any nature done at the request of the Non-Member;
 11. Breach of the peace;
 12. Repeated public drunkenness;
 13. Contagious disease;
 14. Violations of traffic regulations;
 15. Entering an area of the Mescalero Reservation in violation of an Order of the President of the Tribe or Superintendent, designating such area as closed because of fire hazard or for any other reason;
 16. Removing or attempting to remove any Mescalero minor from the Mescalero Reservation without prior approval of the Tribal Council except for the purpose of attending school as provided by law. However, this ground for exclusion shall not apply in cases where a Mescalero minor is removed from the Mescalero Reservation by his/her adoptive parents or by persons who have received custody of such child pursuant to an Order of the Tribal Court of the Mescalero Tribe.
 17. Conducting missionary activities without a mission site permit or missions site on fee patent land within the Reservation boundaries.
- C. In extreme cases involving grave danger to the life, health, morals or property of the Tribe or any

of its members, the Chairman of the Tribal Council with the concurrence of the Superintendent, may order any Reservation Law Enforcement Officer to remove a Non-Member and or any property of such Non-Member bodily from tribal land either before or after such person has been ordered excluded by the Tribal Court as provided in §10-17-3. Reservation Law Enforcement Officers executing such Order shall use only so much force as is necessary to effect the removal. If service of the Notice provided in this Ordinance has not already been made on such person, the Chairman shall cause the Reservation Law Enforcement Officer to serve such Notice upon such person at the time of removal, or shall cause a Notice to be served as soon after removal as possible. In all cases where the person has not already been ordered excluded by the Tribal Court, the Tribal Judge shall notify the person of the place on the Reservation boundary where he may re-enter in the company of a Reservation Law Enforcement Officer for the purpose of attending a hearing before the Tribal Court. The Tribal Judge shall order a Reservation Law Enforcement Officer to accompany such person while he is on the Reservation, coming to and leaving the hearing.

10-18-2. NOTICE AND HEARING.

- A. Any person subject to removal from the Reservation by the Tribal Council pursuant to § 10-17-1 shall be given five (5) days' Notice in writing that a Petition for his removal has been filed with the Council. Said Notice is to be served in the same manner as any Summons issued by the Tribal Court.
- B. Any person subject to removal shall be given a hearing before the Tribal Council where he may present any defense or reasons why he should not be removed from the Reservation. Such a person may at his own expense be represented by an attorney or a tribal member of his choice.

10-18-3. REMOVAL FOR SPEEDING.

- A. Any Non-Member of the Mescalero Apache Tribe who operates a motor vehicle at a rate of speed in excess of the posted speed limits on the Mescalero Reservation, or who violates any other provision of the Uniform Motor Vehicle Code, may be excluded from the Reservation, following the delivery of a Notice to him/her of such violation by a Reservation Law Enforcement Officer, or a police officer of the B.I.A. assigned to duty on the Mescalero Indian reservation and after a due process hearing.
- B. Such period of exclusion shall continue for a period up to three hundred seventy (370) days from the date of issuance of such Notice and hearing and for egregious violations.
- C. A Tribal Judge or a hearing officer will be assigned to hear the matter, such hearing officer to be assigned by the Chief Judge of the Mescalero Apache Tribal Court. The decision of the Judge or hearing officer will be final subject only to the right of appeal to the Tribal Court sitting as an Appellate Court.
- D. Any Non-Member excluded shall be escorted under custody of a Reservation Law Enforcement Officer to the exterior boundary of the Mescalero Indian reservation at the point where he (or she) entered the Mescalero Indian reservation (as the Reservation Law Enforcement Officer may best determine that point) or in the discretion of the Reservation Law Enforcement Officer, he (or she) may be delivered into the custody of the state or federal authorities for prosecution under appropriate law.

10-18-4. TEMPORARY EXPULSION OF NON-TRIBAL MEMBERS. Non-Tribal Members who are present on the Mescalero Indian reservation, and do any act which would be a violation of the Mescalero Apache Tribal Code, if done by a tribal member, or violates and Federal or State Statute deemed by a Judge of the Mescalero Apache Tribal Court to be a reasonable standard applicable to conduct on the

Mescalero Apache Indian reservation, may be temporarily excluded from the Mescalero Apache Indian reservation.

- A. Any Non-Member who is apprehended by a B.I.A. Law Enforcement Officer because of conduct which violates this Section, may be brought before any single Judge of the Mescalero Apache Tribal Court for a hearing.
- B. If the single Judge of the Mescalero Apache Tribal Court, at the time of the hearing, determines that the conduct of the individual is unlawful under any of the standards set forth above, the Mescalero Apache Tribal Judge may issue a Temporary Order of Expulsion, expelling that individual from the Mescalero Indian reservation. The term of the expulsion shall not exceed five (5) days from the date of the entry of the Order.
- C. Upon entry of the Temporary Order of Expulsion, the offending Non-Member will be escorted from the Reservation by a B.I.A. Law Enforcement Officer.
- D. Any individual who re-enters the Mescalero Indian reservation when subject to an Order of Temporary Expulsion, will be subject to prosecution for trespass under applicable law.
- E. This Section is separate from, and is in addition to the power vested in the Mescalero Apache Tribal Council to permanently remove and exclude Non-Members from the Mescalero Indian reservation, under the provisions of Article XI of the Mescalero Apache Tribal Constitution.

SECTION 19. INTERFERENCE WITH LAW ENFORCEMENT.

10-19-1. OBSTRUCTING JUSTICE. Any person who knowingly harbors or gives shelter or assists in the harboring or giving shelter of any person wanted for apprehension or any person who shall aid and assist any other person in escaping from confinement or avoiding apprehension, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-2. RESISTING LAWFUL ARREST. Any person who shall willfully and knowingly, by force or violence, resist or assist another person to resist lawful arrest shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-3. THREATS AGAINST LAW ENFORCEMENT OFFICERS. Whoever knowingly and willfully imparts or conveys, either by written or oral communication or otherwise, any threat to take the life of or to inflict bodily harm upon any Reservation Law Enforcement Officer shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-4. ESCAPE. Any person who being in lawful custody, for any offense, shall escape or attempt to escape, or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both.

10-19-5. TAMPERING WITH EVIDENCE. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent or to throw suspicion of the commission of a crime upon another. Whoever commits tampering with evidence shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-6. COMPOUNDING A CRIME. Compounding a crime consists of knowingly agreeing to take anything of value upon the agreement or understanding, express or implied, to compound or conceal a crime or to abstain from a prosecution therefor, or to withhold any evidence thereof. For purposes of this Section, a person may be prosecuted and convicted of compounding a crime though the person guilty of the original crime has not been charged, indicted or tried. Whoever commits compounding a crime shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-7. FURNISHING DRUGS OR LIQUOR TO A PRISONER. Furnishing drugs or liquor to a prisoner consists of directly or indirectly furnishing any narcotic drug or intoxicating liquor to any person held in lawful custody or confinement, unless such narcotic drug or intoxicating liquor is furnished pursuant to the direction or prescription of a regularly licensed physician attending such person or penal facility. Whoever commits furnishing drugs or liquor to a prisoner shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-8. MAINTAINING MALE AND FEMALE PRISONERS TOGETHER. Maintaining male and female prisoners together consists of any jailer or guard keeping male and female prisoners in the same cell or room, unless such prisoners are man and wife. Whoever commits maintaining male and female prisoners together shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-9. ENCOURAGING VIOLATION OF PROBATION, PAROLE OR BAIL. Encouraging violation of probation, parole or bail consists of intentionally aiding or encouraging a person known by him to be on parole, probation or bail to abscond or to violate a term or condition of his probation, parole or bail. Whoever commits encouraging violation of probation, parole or bail, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-19-10. IMPERSONATING A PEACE OFFICER. Any person or persons who shall on the Mescalero Apache Indian reservation, without due authority, exercise, or attempt to exercise the functions of, or hold himself or themselves out to anyone as a Reservation Law Enforcement Officer, or other peace officer, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine of Three Hundred Sixty Dollars (\$360.00) or both such imprisonment and fine.

SECTION 20. MISCONDUCT BY OFFICIALS.

10-20-1. DEMANDING ILLEGAL FEES. Any tribal officer or tribal employee knowingly asking or accepting anything of value greater than that fixed or allowed by law for the execution or performance of any service or duty, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both.

10-20-2. PAYING OR RECEIVING TRIBAL MONEY FOR SERVICES NOT RENDERED. Paying or receiving tribal money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from tribal funds where such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered. Nothing in this Section shall be construed to prevent the payment of tribal funds where such payments are intended to cover lawful remuneration to public officers or public employees for vacation periods or absences from employment because of sickness, or for other lawfully authorized purposes. Whoever commits paying or receiving tribal money for services not received shall be guilty of an offense and upon conviction thereof, shall be

sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-20-3. MAKING OR PERMITTING FALSE TRIBAL VOUCHER. Making or permitting a false tribal voucher consists of knowingly, intentionally or willfully making, causing to be made or permitting to be made, a false material statement or forged signature upon any tribal voucher, or invoice supporting a tribal voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of tribal money. Whoever commits making or permitting a false tribal voucher, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

10-20-4. UNLAWFUL INTEREST IN TRIBAL CONTRACT. Unlawful interest in a tribal contract consists of:

- A. Any tribal officer or tribal employee receiving anything of value, directly or indirectly, from either a seller or a seller's agents, or a purchaser or a purchaser's agents in connection with the sale or purchase of securities, goods, leases, lands or anything of value by the Tribe, unless:
 - 1. Prior written consent of the head of the department of the Tribe involved in the transaction is obtained and filed as a matter of public record in the office of the Tribe; and
 - 2. Subsequent to the transaction, a statement is filed as a matter of tribal record in the office of the Tribe by the purchaser or seller giving anything of value to a tribal officer or tribal employee and this statement contains the date the services were rendered, the amount of remuneration for the rendered services to the Tribe in connection with the aforementioned transactions and the nature of the rendered services;
- B. Any seller, or his agents, or a purchaser, or his agents, offering to pay or paying anything of value directly or indirectly to a tribal officer or tribal employee in connection with the sale or purchase of securities or goods by the Tribe unless the requirements of paragraphs 1 and 2 of Sub-Section A of this Section are complied with. Any person violating the provisions of Sub-Section B of this Section, where such violation forms the basis for prosecution and conviction of the tribal officer or tribal employee, shall be disqualified from transacting any business with the Tribe for a period of five (5) years from the date of such violation. Nothing in this Section shall prohibit a tribal officer or tribal employee from receiving his regular remuneration for services rendered to the state or its political subdivisions in connection with the aforementioned transactions. Whoever commits unlawful interest in a tribal contract, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both.

10-20-5. CIVIL DAMAGES FOR ENGAGING IN ILLEGAL ACTS. In addition to any criminal penalties imposed, a tribal officer or tribal employee convicted of violating any provision of Section 19 of this Code shall be liable for anything of value received by him to the department of the Tribe in whose employ or service he was at the time of such violation of that Section. Action for recovery of amounts under this Section shall be brought in the Tribal Court. The actions shall be brought in the name of the Tribe for the benefit and use of the department of the Tribe in whose employ or service the tribal officer or tribal employee was at the time of the commission of the crime.

10-20-6. OFFENSES OF ELECTED OFFICERS AND JUDGES. Any elected Tribal Officer or Tribal Judge convicted of drunkenness in any Court or convicted of any of the enumerated criminal offenses of this Tribal Code shall be subject to the constitutional provisions of the Mescalero Apache Tribe, Article X, Section 1.

10-20-7. REPORTS TO TRIBAL COUNCIL. When any elected Tribal Officer or Tribal Judge has been convicted by the Tribal Court of any of the enumerated criminal offenses of this Tribal Code, the Chief Judge or a designated Associate Judge shall provide a written report setting forth findings, conclusions, and final disposition of the Court in such cases. The Tribal Court shall additionally make its file on such cases available to the Tribal Council as a whole.

SECTION 21. BRIBERY.

10-21-1. BRIBERY. Any person who shall give or offer to give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct, and any person who shall accept, solicit or attempt to solicit any bribe as above defined, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

SECTION 22. PERJURY.

10-22-1. PERJURY AND FALSE SWEARING. Any person who shall willfully and deliberately, in any official tribal proceeding or in the filing of tribal applications or other documents, falsely swear or interpret, or shall make a sworn statement or Affidavit, knowing same to be untrue, or shall aid, assist, induce or procure another to do so, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or both.

SECTION 23. INITIATORY CRIMES.

10-23-1. ATTEMPT TO COMMIT A CRIME. Any Person who attempts to commit a an overt act in furtherance of and with intent to commit a crime but fails to affect its commission upon conviction thereof, may be sentenced to labor or imprisonment not to exceed two hundred forty (240) days plus Court costs.

10-23-2. CONSPIRACY. If two (2) or more Persons conspire to commit any offense enumerated in this Code, against the Mescalero Apache Tribe or any other person, or to defraud the Mescalero Apache Tribe or any branch thereof, in any manner or for any purpose, and one or more of such Persons commits any act to effect the object of the conspiracy, they shall be deemed guilty of an offense and upon conviction thereof each may be sentenced to labor or imprisonment for a period of one hundred eighty (180) days plus Court costs or a fine of Three Hundred Sixty Dollars (\$360.00) plus Court costs, or both such imprisonment and fine in extreme or habitual cases.

SECTION 24. CRIMES AGAINST TRIBE IN TIMES OF EMERGENCY.

10-24-1. FAILURE TO DILIGENTLY ASSIST TRIBAL FIRE FIGHTING CREWS.

- A. Any Indian who shall neglect or refuse, when called upon by any officer representing the protection of natural resources of the Tribe to go to a forest or range fire, shall be deemed guilty of an offense and upon conviction, shall be sentenced for a period of not less than fifteen (15) days nor more than thirty (30) days at labor or to a fine not less than Thirty Dollars (\$30.00) nor more than Sixty Dollars (\$60.00) or both such imprisonment and fine, plus Court costs, for neglect or refusal when called upon to go to a forest or range fire.
- B. Any Indian who shall be negligent in his duty while working on a fire shall be subject to immediate dismissal and be deemed guilty of an offense and upon conviction shall be sentenced for a period of not less than thirty (30) days nor more than sixty (60) days at labor or to a fine not less than Sixty Dollars (\$60.00) nor more than One Hundred Twenty Dollars (\$120.00) or both such imprisonment and fine, plus Court costs for a person who shall be negligent in his duty while working on fire.

- C. The penalties of this Section shall not apply to persons deemed to be physically unfit for this type of work for medical reasons as ascertained by a licensed doctor or by a U.S. Public Health Service doctor, and by persons sixty (60) years of age or older. Discretion shall be given by the ordering officer to a minimal time allowance to let the involved individual return to his home to change from unsuitable work clothing to suitable work clothing before reporting for work prior to deeming the involved individual to be guilty of an offense and subsequent Court action under this Section.

SECTION 25. DESECRATION, TRESPASSING AND LOITERING AT CEMETERY.

10-25-1. LIMITED ACCESS TO CEMETERY. The Mescalero Cemetery and the general area surrounding the Mescalero Cemetery shall be off limits to all persons, except for persons conducting or participating in a burial, and those who wish to place flowers on a grave, or restore or improve a burial site.

10-25-2. DESECRATION OF CEMETERY. Any person who shall pilfer, molest, desecrate or damage any grave site in the Mescalero Cemetery shall be guilty of an offense, and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed six (6) months, or a fine of not more than five hundred dollars (\$500.00), or both.

10-25-3. TRESPASSING ON CEMETERY. Any person who trespasses upon the Mescalero Cemetery, or who loiters upon the Cemetery, or within two-tenths (.2) miles thereof, except for those conducting or participating in a lawful burial, or those paying homage to the deceased, or restoring or improving a grave site, shall be guilty of an offense, and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed six (6) months, or a fine of not more than five hundred dollars (\$500.00), or both.

SECTION 26. SACRED PRACTICES

10-26-1. PROHIBITED ACTS. The recording, taping, photographing, sketching, or in any other way preserving the performance of any ceremony, ritual, traditional practice, song, chant, or any other sound or act which is culturally traditional to the Mescalero Apache Tribe and its members is prohibited.

10-26-2. PERMISSION FOR EXCEPTION. The Mescalero Apache Tribal Council may from time to time grant specific permission for an exception to this Section when it is beneficial or is to the best interest of the Tribe.

10-26-3. VIOLATIONS AND PENALTIES.

- A. Any Non-Member who shall violate this Section shall be subject to immediate exclusion from the Mescalero Reservation and all equipment, devices and produced product shall be forfeited and confiscated at the direction of the Mescalero Apache Tribal Council.
- B. Any person subject to the jurisdiction of the Mescalero Tribal Court who violates the intent and purpose of this Ordinance and found guilty by the Mescalero Tribal Court shall be subject to a fine not to exceed one thousand dollars (\$1,000) or a sentence of one-hundred-eighty (180) days in jail, or both. Upon conviction any recordings, tapes, records, photographs, sketches, written notes or any other preserved form of said act shall be forfeited to the Mescalero Apache Tribe and be destroyed at the direction of the Mescalero Apache Tribal Council. All parties ordered to appear at a hearing, concerning an alleged violation of this Section, shall be given at least ten (10) days' notice prior to the hearing.

SECTION 27. DOMESTIC VIOLENCE

10-27-1. DOMESTIC VIOLENCE. The following offenses, when committed against a household member, as defined at Section 30-1-2 (D), shall constitute the separate and distinct offense of domestic violence: stalking, assault, assault and battery, criminal trespass, criminal damage to property, or any sex offense. Any person who commits domestic violence shall be deemed guilty of an offense and, upon

conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed two hundred and fifty (250) days or a fine not to exceed Seven Hundred and Fifty Dollars (\$750.00), or both, provided that he or she shall also be subject to the additional domestic violence sentencing provided in Chapter 9.

SECTION 28. ABUSE OF ELDERS & VULNERABLE ADULTS

10-28-1. PURPOSE. This Section is meant to prevent and remedy the abuse, neglect, exploitation, or abandonment of elders and vulnerable adults and to provide these persons with the protection of the Mescalero Apache Tribal Court.

10-28-2. DEFINITIONS. As used in this Section:

- A. “Abandonment” means any action or inaction by a person or entity with a duty of care for an elder or a vulnerable adult that leaves the elder or vulnerable person without the means or ability to obtain essential services.
- B. “Abuse” means a non-accidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.
- C. “Consent” means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.
- D. “Elder” means any person who is fifty-five (55) years of age or older.
- E. “Essential services” means those services or things necessary to sustain a person’s life, physical and mental health, and general well-being, such as adequate food, clothing, shelter, and health care. It may include service or items considered essential under the person’s customs, tradition or religion, including but not limited to, access to traditional foods and access to religious ceremonies or services.
- F. “Exploitation” means the illegal or improper use of an elder or vulnerable adult or that person’s income or resources, including trust funds, for another person’s profit or advantage. Exploitation includes the unreasonable imposition on the elder’s time resources, such as leaving children or other persons in the care of the elder or vulnerable adult for extended periods or under circumstances in which the elder or vulnerable adult cannot adequately care for such children or other persons.
- G. “Neglect” means a pattern of conduct or inaction by a person or entity with a duty of care for an elder or vulnerable adult which results in the deprivation of essential services to the elder or vulnerable person.
- H. “Tribal human resource organization” means any agency recognized by the Tribe as authorized to deliver social services to residents of the Reservation. For example, the B.I.A. Social Services and the Tribal Elderly Program are each considered to be Tribal human resource organizations.
- I. “Vulnerable adult” means a person eighteen (18) years or older who has the functional, mental, or physical inability to care for himself. “Vulnerable adult” shall include:
 - 1. Persons found incapacitated or adult persons who are otherwise eligible for the appointment of a guardian under the Tribal Code;
 - 2. A person who has a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by a qualified mental health professional to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the

individual; or

3. Persons admitted to any long-term facility or receiving services from home health, hospice, or home care agencies located or operating on the Mescalero Apache Reservation.

10-28-3. ELDER ABUSE, EXPLOITATION, NEGLECT OR ABANDONMENT. Any person who shall knowingly and willingly subject an elder or vulnerable adult to abuse, exploitation, neglect or abandonment shall be guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed three hundred and sixty-five (365) days or a fine not to exceed One Thousand Dollars (\$1,000.00) or both.

10-28-4. REPORTING OF ABUSE, EXPLOITATION, NEGLECT OR ABANDONMENT.

- A. Any person, having reasonable cause to believe that an elder or vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective services may report such belief to the Reservation Law Enforcement or the Tribal Prosecutor's Office.
- B. The following persons having reasonable cause to believe that an elder or vulnerable adult has suffered abuse, exploitation, neglect or abandonment shall make an immediate oral report of such information to Reservation Law Enforcement or the Tribal Prosecutor's Office within ten (10) days of receiving such information, any:
 1. Reservation Law Enforcement officer,
 2. Tribal human resource organization employee,
 3. Employee of any mental health or health agency, including but not limited to Indian Health Service (IHS) personnel, home health, hospice, and home care agency, long-term care facility or assisted living service or assisted living services located or operating on the Reservation; or
 4. Health care provider located or operating on the Reservation, including but not limited to doctors, nurses, psychologists, and pharmacists.
- D. Any mandatory report made under this Section shall contain, if known:
 1. The identification of the elder or vulnerable adult;
 2. The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
 3. Any evidence of previous abuse, neglect, exploitation, or abandonment;
 4. The name and address of the person making the report; and
 4. Any other helpful information.
- E. To the greatest extent possible, the identity of any person making a report under this Section shall be kept confidential.

10-28-5. CRIMINAL SANCTION FOR FAILURE TO REPORT. Any person mandated to report abuse, neglect, exploitation or abandonment of a vulnerable adult as provided by this Section who knowingly fails to do so or willfully prevents someone else from doing so shall be guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Five Hundred Dollars (\$500.00) or both.

10-28-6. ABUSE & EXPLOITATION PROTECTIVE ORDER. An elder or vulnerable adult or the Tribal Prosecutor on behalf of and with the consent of and elder or vulnerable adult may file a petition for a protective order from abuse or exploitation, or the threat thereof, in Tribal Court.

- A. The petition shall:

1. Allege that the petitioner is an elder or vulnerable adult and that he has been abused or exploited or is threatened with abuse or exploitation by the respondent; and
 2. Be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought.
- B. Unless otherwise provided by this Section, the Tribal Court shall order a hearing on a petition for protective order filed under this Chapter not later than fourteen (14) days from the date of such filing.
- C. In the event that the Tribal Court determines that an emergency exists, involving danger of immediate harm to person or property, or there is other good cause, it may issue a temporary protection order without notice or hearing. Such protection order shall not be enforced until the person to whom it is directed has been served with a copy of it or has otherwise been informed of its contents, and a hearing shall be held as soon thereafter as possible.
- D. An order of protection issued by the Tribal Court under this Chapter may:
1. Restrain the respondent from committing acts of abuse or exploitation;
 2. Exclude the respondent from petitioner's residence for a specified period or until further order of the court;
 3. Prohibit contact by respondent for a specified period or until further order of the court;
 4. Require an accounting by respondent of the disposition of petitioner's income or other resources;
 5. Restrain the transfer of property for a specified period not exceeding ninety (90) days; and
 6. Require other relief as the court deems necessary.
- E. Any relief granted by a protective order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year after which time it shall be reviewed by the Court to determine if the order should remain in effect.

10-28-7. ADDITIONAL REMEDIES. Nothing in this Section shall be deemed to preclude the Tribal Court, to the extent authorized by Tribal law, from:

- A. Issuing an injunction, temporary restraining order, or similar relief by ordering a respondent to temporarily or permanently refrain from conducting the acts or actions that gave rise to a complaint under this Section;
- B. Ordering the respondent to pay compensation or restitution to an individual or any other entity injured by the actions of the respondent; or
- C. Imposing any other civil or criminal remedy for any violation of the Tribal Code.

CHAPTER 11

CHILDREN'S CODE

SECTION 1. SCOPE.

11-1-1. PURPOSE. The purpose of this Chapter is to provide to the Mescalero Apache Tribal Children's Court, hereinafter referred to as the "Children's Court," social serviced and law enforcement agencies and the Tribal community a statement of policy and procedures for meeting the needs of children who come before the Children's Court.

11-1-2. POLICY. It is the policy of the Mescalero Apache Tribe that:

- A. Each child who comes before the Children's Court shall receive, preferably in his or her own home or that of his or her extended family, the care, guidance, and control, that is conducive to his or her welfare and the best interests of the Tribe;
- B. Family ties be preserved and strengthened whenever possible;
- C. Any child who is removed from his or her home shall receive care, guidance and control as nearly equivalent as that given by parent(s);
- D. A continuum of services for children and their families shall be provided, with emphasis whenever possible on prevention, early intervention, and community based alternatives;
- E. Incarceration of a child is the remedy of last resort and community based alternatives to incarceration are preferred;
- F. The rights of and fairness to the children, parents, guardians, caretakers and other parties before the Children's Court shall be secured;
- G. Procedures for intervention in state court procedures regarding children and transfer of jurisdiction over children from state and other tribal courts to the Children's Court shall be provided; and
- H. At the same time the peace and security of the Tribal community and its individual members shall be safeguarded; and
- I. Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, this Chapter, other ordinances, regulations, public policies, recognized customs, and common law of the Tribe shall control in any proceeding before the Children's Court as provided.

11-1-3. SHORT TITLE. This shall be known and may be cited as the Children's Code.

11-1-4. CONSTRUCTION. To effectuate the purpose and policy of this Chapter, the language herein shall be construed liberally.

11-1-5. DEFINITIONS. As used in this Chapter:

- A. "Adult" means a person:
 - 1. On the Reservation,
 - 2. Who is eighteen (18) years of age or over or
 - 3. Otherwise emancipated by order of a court of competent jurisdiction,
 - 4. Whether such person is a Tribal member or not.
- B. "Care, control, and supervision" means:

1. The authority:
 - a. Vested by an order of the Children’s Court,
 - b. In an agency or institution over a child,
 - c. Where the child has come before the Children’s Court due to the child’s commission of an act that would be a crime, if committed by an adult;
 2. Which shall include the power to determine:
 - a. Methods of treatment or rehabilitation, including incarceration,
 - i. As deemed necessary,
 - ii. After evaluation,
 - iii. Given the nature of the original act that brought the child before the Children’s Court;
 - b. Visiting hours and conditions;
 - c. Conditions for temporary release;
 - d. Recommendations for final release; and
 - e. Access to medical, dental, psychological, educational, and other services and transport to receive such services;
 3. Subject to review and reconsideration by the Children’s Court; and
 4. Terminating:
 - a. Upon an order by the Children’s Court,
 - b. Unless the Children’s Court provides otherwise.
- C. “Caretaker” means a person,
1. Who, similar to that of a parent over his or her child, has:
 - a. Physical control of a child, and
 - b. Primary responsibility for sheltering and otherwise caring for that child; and
 2. Such control and responsibility are:
 - a. Not provided for by an order of a court of competent jurisdiction,
 - b. But, recognized by the Tribal community, including the child and/or the parent(s) or guardian.
 3. An example of a caretaker includes: a grandparent or other relative who has reared a child, though no order of the Children’s Court or any other court has formally terminated parental rights, transferred custody, or designated the grandparent as the child’s guardian.
- D. “Children’s Court” means the court of the Tribe that has jurisdiction over juvenile justice and child welfare cases as described herein.
- E. “Council” means the Tribal Council of the Tribe.
- F. “Child” means
1. A person:
 - a. Who is on the Reservation,

- b. Who is less than eighteen (18) years of age, and
 - c. Has not been emancipated by order of a court of competent jurisdiction,
 - d. Whether such person is a Tribal member or not; or
- 2. A person:
 - a. Who is less than eighteen (18) years of age, and
 - b. Who is an enrolled member or is eligible to become an enrolled member of the Tribe,
 - c. Regardless of his or her location,
 - d. For purposes of the Indian Child Welfare Act.
- G. “Child placement agency” means an agency licensed or approved, pursuant to Tribal or state law, to receive children for placement or adoption.
- H. “Dependent child” is a child who:
 - 1. Is homeless, destitute, or without proper support or care through fault of his or her parent(s), guardian, or caretaker; or
 - 2. Lacks proper care by reason of the mental or physical condition or his or her parent(s), guardian or caretaker.
- I. “Deprivation of custody” means transfer of legal custody by the Children’s Court from a parent(s), guardian, or caretaker to another person, agency or institution.
- J. “Detention” means the temporary care of children who require secure custody in physically restricting facilities pending further Children’s Court proceedings or transfer to another jurisdiction.
- K. “Findings of fact” means those facts:
 - 1. That the Children’s Court finds,
 - a. After review of all evidence presented,
 - b. For purposes of determining the disposition of a case and the status of a child,
 - 2. Have occurred.
- L. “Foster home” means a facility licensed and approved pursuant to Tribal or state law to provide out of home placement for a child.
- M. “General Tribal Court” means that court of the Tribe that has jurisdiction over matters involving any adult persons as described in Chapter 2 of the Tribal Code.
- N. “Guardian” means an individual given guardianship of the person by a court of competent jurisdiction.
- O. “Guardianship of the person” includes, among other things, the authority to consent to:
 - 1. Marriage,
 - 2. Enlistment in the armed forces, and
 - 3. Major medical, surgical, or psychiatric treatment.
 - 4. Guardianship of the person also includes legal custody, if legal custody is not vested in another person, agency, or institution.

- P. “Incarceration” means the placement of a child who is ordered into a tribal, state or federal facility designed for rehabilitation or training after the child has been determined to be in need of such rehabilitation or training.
- Q. “Indian Child Welfare Act” or “ICWA” means the federal legislation which allows for Tribal control over the placement of children who are enrolled or eligible to become enrolled members of the Tribe, regardless of their location, at 25 U.S.C. 1901-1963.
- R. “Lay advocate” or “advocate” means a person:
1. Appearing before the Children’s Court,
 2. At the request of a parent(s), guardian, caretaker, or other involved party,
 3. Who shall recognize and be limited by the Children’s Court Advocacy Guidelines at § 11-4-8 of this Code.
- S. “Legal custody” means a relationship embodying the following rights and duties:
1. The right to physical custody of a child;
 2. The right and duty to protect, train, and discipline him or her;
 3. The duty to provide him or her with food, clothing, shelter, education, and medical care;
 4. The right to determine where and with whom he or she shall live; and
 5. The duty, in an emergency, to authorize surgery or other extraordinary care.
- T. “Neglected Child” is a child found to be in one or more of the following situations:
1. Abandoned by his or her parent(s), guardian, or caretaker;
 2. Subjected to mistreatment or abuse by his or her parent(s), guardian, or caretaker;
 3. Lacking parental care by reason of the fault or habits of his or her parent(s), guardian, or caretaker;
 4. His or her parent(s), guardian, caretaker neglects or refuses to provide:
 - a. Proper or necessary subsistence,
 - b. Education,
 - c. Medical or surgical care, orOther care necessary for his or her health, morals or well-being;
 5. His or her parent(s), guardian, or caretaker neglects or refuses to provide the special care made necessary by his or her mental condition;
 6. Found in a disreputable place or associates with vagrant, vicious, or immoral persons;
 7. Engaged in an occupation or in a situation or environment dangerous to life or limb or injurious to the health, morals, or welfare of him- or herself or others;
 8. Born addicted to alcohol and/or exposed to a controlled substance; or
 9. His or her parent(s), guardian, or caretaker has been convicted of:
 - a. A crime that is:
 - i. Violent or
 - ii. Sexual in nature,

- iii. Against the other parent or a sibling of the child; or
 - b. Other crime of a nature that demonstrates the parent's, guardian's, or caretaker's unfitness to adequately parent the child.
- U. "Presenting Officer" is the person who represents the Tribe in all matters related to this Chapter and acts as the prosecutor in Children's Court.
- V. "Privileged communication" means:
 - 1. A communication,
 - 2. Between two (2) or more individuals, each of whom is a certain class of person,
 - 3. That gives rise to a special legal right to or immunity from prosecution for refusing to disclose such communication.
 - 4. Examples of privileged communication include, but are not limited to, communication between doctor and patient, attorney and client, clergyman and penitent, husband and wife, and psychotherapist and patient.
- W. "Probation" means a legal status created by a court order:
 - 1. Following a determination by the Children's Court that the child has violated a law under the Tribal Code,
 - 2. Whereby the child is permitted to remain in his or her home,
 - 3. Under prescribed conditions and supervision by a competent person designated by the Children's Court,
 - 4. Subject to return to the Children's Court for violation of any of the prescribed conditions.
- X. "Protective supervision" means a legal status created by a court order:
 - 1. Following a determination by the Children's Court that the child is neglected or dependent,
 - 2. Where the child is permitted to remain in his or her home,
 - 3. Under supervision and assistance to correct the neglect or dependency provided by a competent person or agency appointed by the Children's Court.
- Y. "Reform school" means a residential correctional facility for juveniles.
- Z. "Rehabilitation" means the use of incarceration, shelter, or group home care or treatment to effectuate behavioral change in a child determination by the Children's Court to have committed an act which would be a crime if committed by an adult.
- AA. "Reservation" means the Mescalero Apache Indian Reservation.
- BB. "Reservation Law Enforcement Officer" or "Officer" means any police officer who is authorized by the Tribe to make arrests, issue citations, and otherwise preserve the peace within the exterior boundaries of the Reservation.
- CC. "Serious bodily injury" means an injury which involves:
 - 1. A substantial risk of death;
 - 2. Extreme physical pain;
 - 3. Protracted and obvious disfigurement; or
 - 4. Protracted loss or impairment of a bodily member, organ, or mental faculty.

- DD. “Shelter care” means the temporary care of children in physically unrestricting facilities pending further Children’ Court proceedings or transfer to another jurisdiction.
- EE. “Termination or parental rights” means the permanent severing of all parental rights and duties by court order.
- FF. “Tribal human resource management organization” means any agency recognized by the Tribe as authorized to deliver social services to residents of the Reservation.

SECTION 2. JURISDICTION.

11-2-1. JURISDICTION. Except as otherwise provided by this Chapter, the Children’s Court shall have jurisdiction where both A and B below are met:

- A. At least one of the parties is:
 - 1. An adult or a child:
 - a. Whether he or she is a Tribal member or not,
 - b. Within the exterior boundaries of the Reservation
 - c. Unless otherwise limited by federal law; or
 - 1. A child:
 - a. Who is an enrolled member or
 - b. Eligible to be an enrolled member of the Tribe,
 - c. Regardless of his or her location,
 - d. For purposes related to application of the Indian Child Welfare Act, hereinafter referred to as “ICWA,” and
- B. The case involves:
 - 1. A child who has violated any applicable federal, state or municipal law, or the Tribal Code, regardless of where the violation occurred;
 - 2. A child:
 - a. Who is a neglected or dependent child,
 - b. Whose behavior is injurious to his or her own welfare or the welfare of others, or
 - c. Who is beyond the control of his or her parent(s), guardian, or caretaker, or school authorities;
 - 3. The custody or appointment of a guardian for a child;
 - 4. The termination of the legal parent-child relationship;
 - 5. Judicial consent to the marriage, employment, or enlistment of a child in the armed forces;
 - 6. Judicial consent to emergency medical surgical treatment of a child; or
 - 7. The treatment or commitment of a mentally defective or mentally ill child.

11-2-2. JURISDICTION OVER CERTAIN PREGNANT WOMEN.

- A. The Children’s Court shall have jurisdiction over a women:
 - 1. Who is located within the exterior boundaries of the Reservation and

2. Is pregnant,
 3. With a child who when born shall be eligible to become a Tribal member, and
 4. Is abusing or has abused alcohol or a controlled substance,
 5. Where it can be shown by a preponderance of the evidence that the woman is pregnant and is abusing or has abused alcohol or a controlled substance.
- B. The Children's Court may enter orders requiring the woman to:
1. Refrain from drug abuse,
 3. Submit to reasonable measures to assure non-use, and
 3. Comply with community based or in-patient treatment programs.
- C. Information regarding a woman's drug use during pregnancy may not be used in a criminal prosecution against the woman.

11-2-3. TRANSFER OF CASES TO THE CHILDREN'S COURT FROM THE GENERAL TRIBAL COURT.

- A. If, during the pendency of a proceeding in the general Tribal Court, including a preliminary hearing, it is ascertained that the person charged was a child at the time of the alleged offense, the general Tribal Court shall transfer the case to the Children's Court, together with all papers, documents, and transcripts of any testimony connected therewith.
- B. The general Tribal Court shall order the person to be:
1. Taken to the Children's Court,
 2. Taken to the place of detention designated by the Children's Court,
 3. Released to the custody of his or her parent(s), guardian, or caretaker to be brought before the Children's Court at a time designated by it.

11-2-4. TRANSFER OF SERIOUS CASES TO THE GENERAL TRIBAL COURT.

- A. This section shall apply, if the petition in the case of a child fourteen (14) years of age or older alleges that he she committed one or more of the following acts:
1. Aggravated assault;
 2. Assault resulting in serious bodily injury,
 3. An act of a violent nature, or
 4. Abuse committed upon or against a member of the household or family, as proscribed in the Domestic Violence Code, § 10-4-1 *et seq.*
- A. The Children's Court may transfer the case to the general Tribal Court if the Children's Court,
1. After full investigation and a hearing,
 2. Finds that it would be contrary to the best interest of the child or of the public to retain jurisdiction.

11-2-5. TRANSFER OF OTHER CASES TO THE GENERAL TRIBAL COURT. If in the case of a child fourteen (14) years of age or older,

- A. The petition alleges that he or she committed an act which would constitute an offense if committed by an adult, and

- B. The Children’s Court, after full investigation and a hearing, finds that it would be contrary to the best interest of the child, or the public to retain jurisdiction,
- C. Then the Children’s Court may enter an order stating its finding and directing that the child be held for criminal proceedings in the general Tribal Court.

11-2-6. TRANSFER OF CASES TO OTHER COURTS FROM THE CHILDREN’S COURT. Cases involving children who are before the Children’s Court may be transferred by the Children’s Court to any court of competent jurisdiction, provided that:

- A. The other court has a significant interest in the child and
- B. The transfer would be in the best interests of the child, as determined by the Children’s Court.

11-2-7. CONCURRENT JURISDICTION AND VIOLATIONS OF PROBATION OR PROTECTIVE SUPERVISION. The Children’s Court shall have concurrent jurisdiction with the court having jurisdiction over a new offense:

- A. Where the Children’s Court has jurisdiction over a child for a previous violation of the Tribal Code,
- B. That child is placed on probation or protective supervision, and
- C. That child subsequently violates any applicable federal, state or municipal law, or the Tribal Code that is a violation of his or her probation or protective supervision.

11-2-8. CONTINUANCE OF JURISDICTION.

- A. Jurisdiction by the Children’s Court over a child shall continue for purposes of this Chapter until he or she becomes an adult, unless §11-6-4 applies or jurisdiction is terminated prior thereto.
- B. Jurisdiction over an adult or a child by the Children’s Court shall continue even if he or she leaves the physical boundaries of the Reservation.
- C. Specifically, where legal custody or care, control, and supervision over a child are vested with an agency or institution, the Children’s Court shall retain jurisdiction until the Children’s Court orders termination regardless of the physical location of the child.

11-2-9. TERMINATION OF JURISDICTION.

- A. The jurisdiction of the Children’s Court shall terminate upon:
 - 1. Order of the Children’s Court, which may be made at any time, or
 - 2. Transfer of proceedings to another court of competent jurisdiction.
- B. The jurisdiction of the Children’s Court is not terminated by marriage.

SECTION 3. POWERS AND DUTIES.

11-3-1. POWERS AND DUTIES OF THE CHILDREN’S COURT. The Children’s Court shall, but is not limited to:

- A. In any proceeding, either on the motion of a party, or on the Children’s Court’s own motion, issue all orders necessary to ensure the safety, wellbeing, and rehabilitation of children coming within its jurisdiction;
- B. Cooperate fully and negotiate with an make referrals to any federal, tribal, state, or private agency in order to
 - 1. Participate in any foster or shelter care or other placement services,
 - 2. Utilize treatment, rehabilitation, or training program and

- 3. To receive grants-in-aid to carry out the purposes of this Chapter;
- B. Negotiate intergovernmental agreements that further the policies of the Tribe, as described herein, and present any resulting agreement for approval by the Council; and
- C. Utilize social services furnished by any tribal, federal, or state agency.

11-3-2. ANNUAL REPORTS. The Children’s Court shall:

- A. Prepare and submit to the Council an annual report detailing the operations of the Children’s Court, including financial and statistical data, and
- B. Report all funds, and the expenditure thereof, received from all sources in connection with the operation of the Children’s Court.

11-3-3. CONSULTATION WITH EXPERTS IN CERTAIN AREAS.

- A. The Children’s Court shall consult with recognized experts of tribal, state, and federal agencies having relevant knowledge and skill in certain specialized areas.
- B. Such specialized areas include:
 - 1. Those dealing with psychological and physical health,
 - 2. The interpretation of forensic evidence, and
 - 3. Other highly technical areas where the average person would not be able to give a reliable and detailed description or explanation.

SECTION 4. COURT PERSONNEL, APPOINTMENT, AND DUTIES.

11-4-1. APPOINTMENT OF OFFICERS. All appointments shall be made by the Council, who shall appoint a Judges, Probation Officers, a Clerks, and other personnel as may be required in order to ensure that the Children’s Court is able to perform those duties described herein.

11-4-2. JUDGE. The Judge of the Children’s Court shall:

- A. Hear and dispose of cases within the Children’s Court’s jurisdiction,
- B. Oversee the administrative functions of the Children’s Court,
- C. Supervise Children’s Court personnel, and
- D. Otherwise ensure that the policies of the Tribe and the duties of the Children’s Court, as described herein, are met.

11-4-3. PROBATION OFFICERS. The Probation Officers shall:

- A. Make preliminary inquiries, social studies, and other investigations as directed by the Children’s Court;
- B. Keep written records of such investigations or studies;
- C. Make reports to the Children’s Court as provided in this Chapter or as directed by the Children’s Court;
- D. Upon the placement of child on probation or under protective supervision, explain to the child, if deemed mature enough to comprehend his or her status as determined by the Probation Officer, and to the parent(s), guardian, or caretaker and other persons involved,
 - 1. The meaning and conditions of probation or protective supervision, and
 - 2. Necessary instructions to ensure that such conditions are fulfilled;

- E. Keep informed concerning the conduct and behavior of each child on probation or under protective supervision and report as directed to the Children's Court;
- F. Utilize all suitable methods to aid children on probation or under protective supervision and cause improvements in conduct and behavior;
- G. Perform such other duties in connection with the care, custody, or transportation of children as the Children's Court may require; and
- H. In cases in which the child refuses to fulfill probation or protective supervision requirements, enforce probation by petitioning the Children's Court to impose a previously suspended sentence or request a new sentencing hearing for the child.

11-4-4. CLERK. The Clerk shall:

- A. Keep records of all proceedings before the Children's Court;
- B. Issue all process and notice; and
- C. Perform other duties as assigned by the Children's Court.

11-4-5. PRESENTING OFFICER. The Presenting Officer shall:

- A. Act as the Tribal prosecutor in the Children's Court;
- B. Represent the Tribe in all proceedings under this Chapter;
- C. Make recommendations to the Children's Court regarding placement, detention, treatment, or rehabilitation of each child that comes before the Children's Court;
- D. Monitor proceedings before the Children's Court and other courts of competent jurisdiction where children who are or are eligible to become members of the Tribe are involved;
- E. Make recommendations to the Council regarding needed amendments to this Chapter;
- F. Make recommendations to the Children's Court regarding needed amendments or revisions to the procedural rules and approved forms utilized by the Children's Court;
- G. Be responsible for developing and updating the necessary procedures for carrying out the objects of this Chapter; and
- H. Perform such other duties as provided and as the Children's Court directs in order to ensure the policies herein are met.

11-4-6. ADVOCATE FOR THE PARENT, GUARDIAN, OR CARETAKER OR OTHER INVOLVED PARTY. Any parent(s), guardian, or caretaker or other involved party may be represented at each stage of proceedings under this Chapter by a lay advocate,

- A. Who is authorized by the Children's Court to represent the parent(s), guardian, or caretaker, or other involved party,
- B. At his or her own expense.

11-4-7. ADVOCATE FOR THE CHILD. The Children's Court may appoint a lay advocate for a child if the Children's Court finds that the welfare of the child requires special advocacy.

11-4-8. ADVOCATES AND PRIVILEGED COMMUNICATIONS.

- A. Any advocate, appointed or authorized by the Children's Court to represent the interests of the child, parent(s), guardian, or caretaker or other involved party in a particular case, shall keep confidential all information:
 - 1. Obtained from the party represented,

2. Which relates to such representation.
- B. The advocate shall have the right to refuse to disclose such information even where there is a court order requiring disclosure.

11-4-9. CHILD ADVOCACY STANDARDS. All personnel of the Children's Court and any advocate appearing before the Children's Court shall be required to read and strive to uphold the following Child Advocacy Standards:

- A. The primary duty of the Children's Court and other parties before the Court is to consider the best interests of the child at all times.
- B. In general:
1. A child fourteen (14) years of age or older shall be presumed capable of determining his or her best interests and the child's wishes should be honored in such cases.
 2. Where a child is less than fourteen (14) years of age,
 - a. The Children's Court and all advocates shall seek to determine the best interests of the child regardless of whether that determination reflects the wishes of the child.
 - b. However, the wishes of the child are always relevant to the determination of best interests and shall be considered according to the competence and maturity of the child.
- C. The Children's Court and all advocates shall observe the following duties:
1. Appear at all hearings and other proceedings before the Children's Court;
 2. Work to properly ascertain the facts and circumstances underlying the allegations that brought the child before the Children's Court;
 3. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
 4. Urge that specific and clear orders are entered for evaluation, assessment, services, treatment and rehabilitation for the child and his or her parent(s), guardian, or caretaker.
 5. Monitor implementation of case plans and disposition orders;
 6. Inform the Children's Court if:
 - a. Services are not being made available to the child and/or his or her parent(s), guardian, or caretaker,
 - b. The parent(s), guardian, or caretaker fails to take advantage of such services, or
 - c. Such services are not achieving their purpose;
 7. Identify the common interests among the parties and to the greatest extent possible act as a mediator to promote cooperative resolutions;
 8. Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services;
 9. Advocate for the interests of the child in mental health, educational, juvenile justice and other community systems when related to the circumstances causing the child to come before the Children's Court; and
 10. Attend available training programs designed to ensure that these Child Advocacy

Standards are fulfilled and revised as needed.

11-4-10. CONFIDENTIALITY OF PROCEEDINGS AND RELATED INFORMATION. All records and information acquired or reviewed by and all reports to the Children's Court shall be kept confidential and disclosed only as allowed in this Chapter.

SECTION 5. COURT PROCEDURE.

11-5-1. PROCEEDINGS. Children's Court proceedings shall be held within the Reservation at such places and times as the Children's Court shall direct.

11-5-2. GENERAL RULES OF PROCEDURE.

- A. The Children's Court shall strive to ensure that it adheres to policies and procedures which provide for:
 - 1. Fairness,
 - 2. The effective administration of justice,
 - 3. The safety and best interests of the Tribe, and
 - 4. The best interests of the child.
- B. Proceedings before the Children's Court:
 - 1. Shall be regarded as civil proceedings, and
 - 2. Informal in nature.
- C. The Judge may adopt,
 - 1. As needed,
 - 2. In any individual case,
 - 3. The following policies and procedures dealing with juvenile justice and child welfare:
 - a. The policies and procedures of ICWA,
 - b. Rules and forms governing procedure followed by the New Mexico State Juvenile Courts, and
 - c. Chapter 2 of the Tribal Code;
 - 4. Where Tribal policies and procedures are not specifically provided for herein,
 - 5. Except, if such adoption would lead to a conflict with other provisions of this Chapter.

11-5-3. PROFESSIONAL ATTORNEYS. 11-5-4. PROCEEDINGS AND ORDERS NOT CRIMINAL IN NATURE.

- A. Proceedings and orders by the Children's Court shall not be deemed as criminal; and
- B. Any order to place the child under probation or protective supervision is not a conviction of a crime.

11-5-5. FILING FEES, WITNESS FEES, AND OTHER EXPENSES.

- A. There shall be no fee for:
 - 1. Filing a petition,
 - 2. Service of process, or
 - 3. Attendance at proceedings before the Children's Court.

- B. Witness fees shall be payable as determined by the Children's Court.
- C. Any fees, expenses related to proceedings, the cost of publication of summons, and other expenses, shall be paid by the Tribe:
 - 1. When approved by the Children's Court and
 - 2. Provided for in the Children's Court annual budget, which shall be approved by the Council.

11-5-6. RECORDS TO BE KEPT, ACCESSIBILITY.

- A. The Children's Court shall keep all records required by this Chapter and as may be required by the Council.
- B. In all cases which might result in the deprivation of custody or placement of the child,
 - 1. A verbatim record of all hearings shall be taken
 - 2. By a Children's Court stenographer or
 - 3. By means of a mechanical recording device.
- C. In all other proceedings, a verbatim record shall be made, unless dispensed with at the discretion of the Judge in any individual proceeding.
- D. Records of proceedings in cases before the Children's Court:
 - 1. Shall be withheld from public inspection;
 - 2. Except, where the Judge consents, the records shall be open to inspection by:
 - a. Parents, guardians, or caretakers;
 - b. The child,
 - c. Advocates representing the parties, and
 - d. Agencies to which custody or care, control, and supervision or legal custody of child has been transferred;
- E. In adoption cases, probation records, reports of social and clinical studies, and any other records shall not be open to inspection, except by order of the Children's Court.
- F. Neither records of nor any evidence given in a Children's Court proceeding shall be admissible as evidence against the child in any proceedings in any other court.

11-5-7. SOCIAL INVESTIGATIONS.

- A. In all cases before the Children's Court,
 - 1. A social investigation by the Presenting Officer, the Probation Officers, and any advocate of the child shall be made and
 - 2. A report outlining the results of such investigation shall be submitted to the Children's Court in writing as the Children's Court directs.
- B. Social investigations shall cover, but are not limited to, the gathering of information regarding:
 - 1. The child's:
 - a. Home environment,
 - b. School history and records,

- c. Medical history and records, and
- d. Other relevant history and associations;
- 2. The present conditions of the child and parent(s), guardian, or caretaker;
- 3. Recommendations as to the child's future care; and
- 4. In cases involving the financial status of a parent(s), guardian, or caretaker as an indication of the welfare of the child, such matters as earnings, assets, financial obligations, and employment.

11-5-8. HEARINGS, NO JURY. Hearings in cases before the Children's Court shall be without a jury.

11-5-9. ACCESS TO HEARINGS.

- A. The general public shall be excluded.
- B. Only such persons as the Judge finds have a direct and legitimate interest in any individual case or in the work of the Children's Court shall be admitted.

11-5-10. HEARINGS AND SEPARATE QUESTIONING OF CERTAIN PARTIES. The child or his or her parent(s), guardian, or caretaker may be interviewed separately at any time, at the discretion of the Judge.

11-5-11. HEARINGS AND EVIDENCE. Written reports and other material relating to the child's mental, physical, educational and social history and condition, may be:

- A. Received in evidence,
- B. Considered by the Children's Court along with other evidence, and
- C. The Children's Court may require that the person who wrote the report or prepared the material appear as a witness if he or she is reasonably available.

11-5-12. CONSOLIDATION OF PROCEEDINGS.

- A. When more than one child:
 - 1. Is involved in a single home and may be found to be neglected or dependent, or
 - 2. Is alleged to be involved in the same law violation,
- B. The proceedings may be consolidated,
- C. Except that separate hearings regarding the final disposition of each child's case may be held.

11-5-13. AMENDMENT TO PLEADINGS AND CONTINUANCES.

- A. The Children's Court may proceed to consider the additional or different facts
 - 1. When it appears, during the course of any proceeding before the Children's Court, that the evidence proves material facts not alleged in the petition,
 - 2. If the parties consent.
- B. In such event, the Children's Court, on motion of any party or on its own motion, shall direct that the petition be amended to conform to the evidence.
- C. If the amendment results in a substantial departure from the facts originally alleged, the Children's Court shall grant such continuance as justice may require.

11-5-14. SPECIAL RULES OF PROCEDURE, FISH AND GAME, AND BOATING VIOLATIONS.

The Children's Court shall adopt special rules of procedure to govern proceedings involving violations by children of traffic, fish and game, and boating laws.

11-5-15. PRESENCE OF PARENT(S) AND APPOINTMENT OF AN ADVOCATE FOR THE CHILD.

- A. The Children's Court shall endeavor through use of the warrant of arrest, if necessary, or by other means, to insure the presence at the hearing of the parent(s), guardian, or caretaker of the child.
- B. If neither the parent(s), guardian, nor caretaker is present, the Children's Court may appoint an advocate for the child to protect the interests of the child.
- C. An advocate for the child may also be appointed
 - 1. Whenever necessary to protect the welfare of the child,
 - 2. Whether or not a parent(s), guardian, or caretaker is present.
- D. Both parents of the child shall be present at any proceeding where the Children's Court may order incarceration,
 - 1. Unless, a guardian has been appointed by an order of the Children's Court, then such guardian alone shall be present, and
 - 2. The presence of a caretaker shall not be adequate.

11-5-16. GROUNDS FOR RE-HEARING.

- A. A parent(s) or guardian of any child before the Children's Court or any adult affected by a decree or order in a proceeding before the Children's Court, may at any time petition the Children's Court for a re-hearing on the ground that:
 - 1. New evidence,
 - 2. Which was not known, and
 - 3. Could not with due diligence have been made available at the original hearing,
 - 4. That might affect the decree
 - 5. Has been discovered.
- B. If it appears to the Children's Court that there is a ground for a re-hearing, it shall:
 - 1. Order a hearing, and
 - 2. Enter such order or decree as is warranted by all the facts and circumstances, including the new evidence, and the best interests of the child and the public.

SECTION 6. JUDGMENTS, ORDERS, APPEALS.

11-6-1. FINALITY OF JUDGMENTS AND APPEALS.

- A. A decree or order shall be deemed final where the order or decree:
 - 1. Establishes the findings of fact based upon all evidence presented to the Children's Court, and
 - 2. Disposes of the case such that the Children's Court:
 - a. Retains jurisdiction over a child or party solely:
 - i. For purposes of reviewing the effectiveness thereof, or
 - ii. In order to ensure compliance therewith; or

- b. Terminates jurisdiction over a child or party.
- A. No findings of fact in a final decree or order shall be modified or amended upon appeal or otherwise unless clearly erroneous given the evidence originally presented.
- B. However, appeals challenging the application of this Chapter in a final decree or order shall be allowed as provided at § 11-6-2.
- C. Any party may appeal, modify, amend, or stay a non-final decree or order by a motion before the Children's Court:
 - 1. The party shall make such motion immediately after the non-final decree or order is issued; and
 - 2. The Children's Court shall:
 - a. Determine whether the motion was made in regard to a non-final decree or order and in a timely manner;
 - b. Schedule a hearing on any proper motion to appeal, modify, amend or stay a non-final decree or order as soon as possible thereafter; and
 - c. Determine whether the proceedings and the non-final decree or order should be stayed pending such hearing.

11-6-2. APPEALS PROCEDURE.

- A. An appeal to the Council may be taken from any final order or decree of the Children's Court in the same manner in which appeals are made in the general Tribal Court, as provided at Chapter 2 of the Tribal Code.
- B. Appeals must be made within thirty (30) days from the entry of the original order or decree, unless specifically provided otherwise herein.
- C. The appeal shall be heard and decided on the record where the original order or decree directs:
 - 1. Where the child comes before the Children's Court for an act that would be a crime if committed by an adult,
 - 2. The child was within six (6) months of becoming an adult at the time the act was committed, and
 - 3. The decree or order requires that the child remain on probation, under protective custody, in placement, incarcerated, or otherwise under the jurisdiction of the Children's Court for a period after the child becomes an adult.

11-6-3. TERMINATION OF ORDERS VESTING LEGAL CUSTODY OR CARE, CUSTODY, AND SUPERVISION AND RENEWALS.

- A. An order vesting legal custody of a child in an individual, agency, or institution:
 - 1. Shall be for a specific period of time, and
 - 2. Shall terminate at the end of such period,
 - 3. Unless, the Children's Court terminates the order prior thereto.
- B. However, the individual, agency, or institution involved may, within thirty (30) days of termination file a petition for renewal of the order.
- C. The Children's Court may renew the order after receipt of a petition for renewal,
 - 1. After notice to the parties and a hearing,

2. If it finds renewal necessary to safeguard the welfare of the child or the public interest; and
 3. The findings of the Children's Court and the reasons therefore shall be entered with the renewal order or with the order denying renewal.
- D. However, the provisions of this Section shall not apply when a child has been determined to be mentally ill and properly hospitalized or committed to a mental health facility as provided at §11-8-23.

11-6-4. ORDERS, MODIFICATIONS, AND REQUIREMENTS.

- A. The Children's Court may modify or set aside any order or decree it has issued; provided that notice and a hearing shall be required:
1. Where the order placed a child on probation and modification is sought due to a violation of probation; or
 2. Where the effect of modification or the setting aside of an order may be to:
 - a. Deprive a parent(s) or guardian of the legal custody of a child,
 - b. Place the child in an institution or agency, or
 - c. Transfer the child from one institution or agency to another.
- B. However, modification of an order to effect a transfer from one foster home to another may be made without a notice and hearing.

11-6-5. ORDERS TERMINATING PROBATION OR PROTECTIVE SUPERVISION, NOTICE. Notice of an order termination probation or protective supervision shall be given to the parent(s), guardian, or caretaker and the child.

11-6-6. REFUSAL TO OBEY AN ORDER AND CONTEMPT.

- A. Any person who willfully violates or refuses to obey any order of the Children's Court may be held liable for contempt.
- B. Any adult found in contempt of the Children's Court may be punished by:
1. A fine not to exceed Three Hundred Sixty Dollars (\$360.00),
 2. Imprisonment not to exceed one hundred eighty (180) days, or
 3. Both.

11-6-7. PAYMENT OF FINES AND PENALTIES. Except as otherwise provided by law, all fines and penalties imposed and collected by the Children's Court shall be paid to the Clerk.

SECTION 7. SERVICE OF PROCESS, SEARCH WARRANTS, AND SUBPOENAS.

11-7-1. SUMMONS, WHEN REQUIRED.

- A. After a petition is filed or a child has been arrested and after any investigation the Children's Court directs, the Children's Court shall promptly issue summons.
- B. No summons is required if a person:
1. Appears voluntarily or
 2. Files a written waiver of service, on a form provided by the Children's Court, with the Children's Court prior to the hearing.
- C. Otherwise, summons shall be issued to any person within the exterior boundaries of the

Reservation whose presence the Children's Court deems necessary.

11-7-2. SUMMONS, CONTENT REQUIREMENTS.

- A. The summons shall contain:
 - 1. The name of the Children's Court,
 - 2. The title of the proceedings, and
 - 3. A brief statement of the allegations in the petition.
- B. Except, a published summons shall simply state that:
 - 1. A proceeding concerning the child is pending in the Children's Court, and
 - 2. An order or decree affecting that child shall be issued.
- C. The summons shall require the person or persons who have physical control over a child:
 - 1. To appear personally and
 - 2. To bring the child before the Children's Court at a time and place stated; and
- D. If the person who has physical control is a caretaker and not the parent(s) or guardian, the summons:
 - 1. Shall be issued to the parent(s) or guardian, in addition to the caretaker, and
 - 2. Notify him or her of:
 - a. The pendency of the case, and
 - b. The time and place set for the hearing.

11-7-3. IMMEDIATE CUSTODY OF THE CHILD. If it appears to the Children's Court that the welfare of the child or of the public requires that the child be taken into custody, the Children's Court direct that the person serving the summons immediately take the child into custody.

11-7-4. EMERGENCY MEDICAL TREATMENT. The Children's Court shall order emergency medical or surgical treatment:

- A. Upon the sworn testimony of one or more licensed physicians, registered nurses, paramedics, or other professional medical treatment providers that emergency treatment is necessary,
- B. For a child concerning whom a petition has been filed,
- C. Pending the service of summons upon his or her parent(s) or guardian.

11-7-5. COMPULSORY ATTENDANCE OF WITNESSES.

- A. A parent(s), guardian, or caretaker shall be entitled to the issuance of compulsory process for the attendance of witnesses on his or her own behalf or on behalf of the child, in appropriate cases.
- B. An advocate for the child or a Probation Officer shall be entitled to request compulsory process for the attendance of witnesses on behalf of the child.

11-7-6. SERVICE, BY WHOM SERVED. Service of summons or process shall be made by

- A. A Reservation Law Enforcement Officer,
- B. Upon request of the Children's Court, or
- C. Another suitable person selected by the Children's Court.

11-7-7. MANNER OF SERVICE.

- A. Service of summons on the Reservation may be made by:
 - 1. Delivering a copy thereof to the parent(s) or guardian of the child summoned;
 - 2. Parents of a child living together at their usual place of abode may both be served personally by delivery to both parents or by delivery of copies of the summons of each parent to one parent.
- B. The Children's Court may order service by registered mail to the last known address of the person to be served if the Children's Court is satisfied that personal service of the summons is impractical due to:
 - 1. The location of the person,
 - 2. The lack of knowledge regarding the actual physical location of the person, or
 - 3. Evasive actions on the part of the person.
- A. Service shall be complete upon return to the Children's Court of a signed form provided by the Children's Court acknowledging receipt of summons.
- B. If the parent(s), guardian, or caretaker whose presence the Children's Court finds necessary, cannot be found within the Reservation, the fact of his or her child's presence within the Reservation shall be sufficient notice, provided that service has been given in one of the following manners:
 - A. If the address of the parent(s), guardian, or caretaker is known,
 - a. By sending him or her a copy of the summons by registered mail with a return receipt requested to be signed by the addressee only, or
 - b. By personal service outside the Reservation.
 - c. Service by registered mail shall be complete upon return to the Children's Court of the signed form acknowledging receipt by the addressee.
 - B. If the address or physical location of the parent(s), guardian, or caretaker outside the Reservation cannot after diligent inquiry be found, by posting a copy of the summons in six (6) public locations within the exterior boundaries of the Reservation.

11-7-8. SERVICE, TIME REQUIREMENTS.

- A. In the case of service on the Reservation, service completed at least forty-eight (48) hours before the time set in the summons for the appearance of the person served shall be sufficient.
- B. In the case of service outside the Reservation, service completed at least five (5) days before the time set in the summons for appearance shall be sufficient.

11-7-9. SEARCH AND SEIZURE WARRANTS.

- A. If it appears to the Children's Court, upon
 - 1. An affidavit sworn to by a Reservation Law Enforcement Officer or any other person, and
 - 2. The examination of other witnesses, if required by the Judge in a particular case,
 - 3. That there is probable cause to believe that a child is being detained, secreted, or ill-treated in any place within the exterior boundaries of the Reservation.
 - 4. The Children's Court may issue a warrant authorizing a Reservation Law Enforcement Officer or Probation Officer to search for the child.

- B. Upon serving such warrant upon the person in possession of the premises specified in the warrant, a Reservation Law Enforcement Officer shall:
 - 1. Enter the house or premises,
 - 2. If necessary by force,
 - 3. In order to remove the child.
- C. If the child is removed, the Reservation Law Enforcement Officer shall take the child to the Children's Court or to the place of detention or shelter designated by the Children's Court.

11-7-10. FAILURE TO APPEAR AND CONTEMPT.

Any person summoned who, without reasonable cause, fails to appear, may be proceeded against for contempt and the Children's Court may cause a bench warrant for that person to be issued.

11-7-11. SUBPOENAS.

The Children's Court shall issue subpoenas requiring:

- A. The attendance and testimony of witnesses and
- B. Production of records, documents, or other tangible objects as required.

11-7-12. ORDERS RESTRAINING CONDUCT.

The Children's Court shall issue orders restraining the conduct of any party before the Children's Court's as required to insure the safety and best interests of the child or the public.

11-7-13. ARREST OF PARENT(S), GUARDIAN, OR CARETAKER OR A CHILD.

A warrant shall be issued for the arrest of the parent(s), guardian, or caretaker or a child:

- A. If the summons cannot be served, or
- B. If it appears to the Children's Court that
 - 1. The person served will not obey the summons,
 - 2. Serving the summons will be ineffectual, or
 - 3. The welfare of the child requires that he or she be brought immediately into the custody of the Children's Court, and
- C. Any such warrant shall be served anywhere within the within the exterior boundaries of the Reservation.

SECTION 8. JUVENILE JUSTICE.

11-8-1. ARREST OF A CHILD. A child may be taken into custody by any Reservation Law Enforcement Officer without a Children's Court order when:

- A. The Officer has witnessed the child violate federal law or the Tribal Code;
- B. There are reasonable grounds to believe that he or she has committed an act which if committed by an adult would be an offense;
- C. He or she is seriously endangered by his or her surroundings and immediate removal appears to be necessary for his or her protection; or
- D. There are reasonable grounds to believe that he or she has run away or escaped from his or her parent(s), guardian, or caretaker.

11-8-2. NOTIFICATION OF PARENT(S), GUARDIAN, OR CARETAKER OF RELEASE OF CHILD.

- A. When a Reservation Law Enforcement Officer takes a child into custody, he or she shall immediately notify the parent(s), guardian, or caretaker.
- B. The child shall then be released to the care of his or her parent(s), guardian, or caretaker, unless his or her immediate welfare or the protection of the community requires that he or she be detained.
- C. Before the child is released, the parent(s), guardian, or caretaker to whom the child is released shall be required to sign a written promise, on a form supplies by the Children's Court, to bring the child to the Children's Court at a time set or to be set.

11-8-3. DETENTION OF CHILD.

- A. A child shall not be detained by the Reservation Law Enforcement Office any longer than is reasonably necessary:
 - 1. To obtain his or her name,
 - 2. Age,
 - 3. Residence, and
 - 4. Other identifying information and
 - 5. To contact his or her parents guardian.
- B. The child shall thereupon be released.
- C. If a child is not released as provided, he or she shall be taken without unnecessary delay to the Children's Court or to the place of detention or shelter designated by the Children's Court.

11-8-4. DETENTION AND DUTY TO REPORT.

- A. The Reservation Law Enforcement Officer who takes a child to a detention or shelter facility must notify the Children's Court at the earliest opportunity:
 - 1. That the child has been taken into custody and
 - 2. Where he or she has been taken.
- B. Then, the Officer shall promptly file with the Children's Court a brief written report stating:
 - 1. Within seventy-two (72) hours of the child being taken into custody, Saturdays, Sundays and holidays excepted,
 - 2. At which time the Children's Court shall determine the necessity of further detention or shelter care, and
 - 3. The child's parent(s), guardian, or caretaker shall be notified by the Children's Court of such hearing and allowed to be present.

11-8-5. DETENTION OR RELEASE AT THE DISCRETION OF THE JUDGE.

- A. After an immediate preliminary investigation by the Presenting Officer, the Children's Court shall,
 - 1. Upon written promise of the parent(s), guardian, or caretaker to bring the child to the Children's Court at a set time,
 - 2. Order the release of the child to his or her parent(s), guardian, or caretaker,
 - 3. If it is found that the child can be left safely in his or her parent's, guardian's, or caretaker's care.

- B. The Children's Court shall order that the child be held in a detention or a shelter care facility,
 - 1. At any time after a petition is filed,
 - 2. If it is found that continued detention or the bringing of a child into detention is required in order to protect the child's best interests or the safety of the community,
 - 3. Subject to further order of the Children's Court.

11-8-6. PETITIONS AND COMMENCEMENT OF PROCEEDINGS. Proceedings before the Children's Court shall commence as follows:

- A. Petitions alleging the child to have committed an act which would be a crime if committed by an adult shall be filed by
 - 1. A Probation Officer, where such act violates the terms of probation,
 - 2. The Presenting Officer, or
 - 3. A Reservation Law Enforcement Officer.
- B. Notice of the petition shall be given to the child and his or her parent(s); guardian, or caretaker by attaching a copy of the petition to a summons.
- C. The summons to which the petition is attached shall set the date and time for an initial hearing.
- D. The initial hearing, where the child shall be asked to admit or deny the allegations of the petition, shall be held within ten (10) days of the filing of the petition.
 - 1. If the child admits to the allegations in the petition, the Children's Court shall continue under § 11-8-13 through 21.
 - 2. If the child denies the allegations in the petition, the Children's Court shall set a hearing on the matter to be heard within ten (10) days of the initial hearing.

11-8-7. PRELIMINARY INQUIRY.

- A. Prior to the filing of any petition, the Children's Court may require that a preliminary inquiry to be made, under the direction of the Children's Court, to determine whether the interests of the child or the Tribe require that further action be taken.
- B. On the basis of the preliminary inquiry, the Children's Court may direct the petition to be filed by the Presenting Officer.

11-8-8. PETITIONS, CONTENT. The petition shall set forth in simple and brief language:

- A. The name, age, sex, Tribal affiliation and residence of the child;
- B. The names and residence of his or her parent(s) or guardian;
- C. A statement indicating the source of the Children's Court's jurisdiction over the child; and
- D. A description of the act that the child is accused of committing.

11-8-9. VERIFICATION OF PETITIONS.

- A. The petitions shall be verified by affidavit.
- B. The statements in the petition may be made upon information observed and obtained and belief.

11-8-10. PETITIONS, DISMISSAL. The Children's Court may dismiss a petition at any stage of the proceedings.

11-8-11. MOTOR VEHICLE VIOLATIONS. In the case of violations of a Tribal motor vehicle laws,

- A. A petition shall not be required, and
- B. The issuance of a traffic citation or summons shall be sufficient to commence a proceeding before the Children's Court.

11-8-12. INFORMAL ADJUSTMENT OF BEHAVIOR.

- A. In any case where the Children's Court has reason to believe that a child will change his or her behavior without the need to order probation, detention, or other rehabilitative or supervisory action, the Children's Court shall order
 - 1. That the child be released and monitored for informal adjustment of behavior,
 - 2. Provided that:
 - a. The facts are admitted as being true by the child and/or his or her parent(s) or guardian, and
 - b. A signed consent is obtained from a parent(s) or guardian and the child if he or she is of sufficient age and understanding.
- B. Efforts to effect an informal adjustment shall be continued no longer than one (1) month from the date of the initial hearing,
- C. Then, if informal adjustment cannot be accomplished,
 - 1. The petition shall be set for hearing within ten (10) days of the Children's Court's knowledge of the failure and
 - 2. Written notice and summons delivered to the parent(s) or guardian and the child.

11-8-13. CONSENT DECREE.

- A. At any time prior to a final decree or order,
 - 1. The child and his or her parent(s) or guardian may enter into an agreement with the Children's Court,
 - 2. In which each consents to abide by terms established by the Children's Court for rehabilitation and supervision of the child.
- B. At no time will the existence of a consent decree constitute admission to the facts in the petition.

11-8-14. RIGHTS OF THE CHILD. In all proceedings, the child shall have the right to:

- A. Receive and review copies of the petition, any police and other investigative reports, witness lists, and other evidence held by the Presenting Officer;
- B. Compel the production of witnesses, documents, and other evidence on the child's behalf;
- C. Request an advocate; and
- D. Present evidence on his or her behalf and cross-examine witnesses.

11-8-15. DOUBLE JEOPARDY. When a final decree has been issued under this Chapter, the child shall not thereafter be subject to criminal prosecution for the same act giving rise to the petition, except as otherwise provided herein.

11-8-16. FINDINGS OF JURISDICTION. When a child is before the Children's Court, the Children's Court shall review and determine whether the facts provide sufficient bases justifying the exercise of jurisdiction over the child and rule accordingly.

11-8-17. DISPOSITION OF A CASE. In any case before the Children's Court, the Judge shall dispose of the case by:

- A. Placing the child on probation or under protective supervision in his or her own home, upon conditions determined by the Children's Court;
- B. Vesting legal custody or care, control, and supervision of the child in:
 - 1. A public agency or institution,
 - 2. A child placement agency for placement in a foster family home or other facility, or
 - 3. A reform school;
- C. Ordering that the child be required to make restitution for damage or loss caused by his or her acts and impose fines in limited amounts;
- D. Arranging for employment or work programs to enable the child to fulfill his or her obligations under this Section, and for other purposes when deemed desirable by the Children's Court;
- E. Placing the child in the legal custody of a relative or other suitable person, with or without probation or protective supervision;
- F. In a cases involving the violation of a traffic law, in addition to any other disposition,
 - 1. Restraining the child from driving for a periods of time, as the Children's Court deems necessary, and
 - 2. Taking possession of the child's driver's license;
- G. Ordering that the child:
 - 1. Be examined or treated or
 - 2. Held for examination or treatment by a physician, surgeon, psychiatrist, or psychologist, or
 - 3. Receive other special care, and
 - 4. For such purposes, be placed in a hospital, institution, or other suitable facility for either temporary or permanent confinement;
- H. Appointing a guardian for the child where necessary in the best interests of the child;
- I. When a child is committed to the care of anyone other than the child's parents, ordering the person receiving the child to report to the Children's Court:
 - 1. In writing, or
 - 2. In person,
 - 3. At least twice a year on the child's condition and welfare; or
- J. When a child is placed on probation, requesting reports from the Probation Officer assigned by the Children's Court to monitor the child's compliance with probation, as the Children's Court deems appropriate.

11-8-18. EXAMINATIONS.

- A. The Children's Court may
 - 1. Order that a child be examined by a physician, surgeon, psychiatrist, or psychologist and
 - 2. Place the child in a hospital or other facility for such examination, including state

facilities.

- B. After due notice and a hearing, the Children's Court may order a similar examination of a parent(s) or guardian whose ability to care for a child is at issue.
- C. If the Children's Court finds from the evidence presented at a hearing that the parent's or guardian's physical, mental or emotional condition may be a factor in causing the neglect, dependency or delinquency of the child, the Children's Court may place the child as set forth in this Chapter.
- D. No information gathered under the authority of this Section shall be used
 - 1. As evidence in any proceeding before the Children's Court or general Tribal Court or
 - 2. For any other purpose, except by order of the Children's Court.

11-8-19. HOSPITALIZATION OR COMMITMENT OF A MENTALLY ILL CHILD. The Children's Court shall order a child to be hospitalized in or committed to a mental health facility:

- A. If the Children's Court finds,
 - 1. Upon due notice to the parent(s) or guardian and
 - 2. A special hearing conducted in accordance with § 25-1-9 of this Code
- B. That the child is mentally ill and
- C. Because of his or her illness is:
 - 1. Likely to injure him- or herself or others if allowed to remain at liberty, or
 - 2. Is in need of custody, care and treatment in a mental hospital.

11-8-20. TERMINATION OF PARENTAL RIGHTS. The Children's Court may terminate all parental rights as provided as 11-10-1, *et seq.*

11-8-21. OTHER DISPOSITION OF CASES. The Children's Court shall make any other reasonable orders which are for the best interests of the child or are required for the protection of the public.

SECTION 9. CHILD WELFARE.

11-9-1. GENERAL DUTY TO REPORT CHILD ABUSE AND NEGLECT.

- A. Any person who has a reasonable cause to suspect that a child is abused, neglected, or otherwise in need of care shall immediately report to the Tribal human resource management organization or a Reservation Law Enforcement Officer.
- B. Those persons reporting as required by this Section have the right to remain anonymous and that right shall be respected by the person receiving the report.

11-9-2. PERSONS SPECIFICALLY REQUIRED TO REPORT AND THE NATURE OF SUCH REPORT.

- A. The following persons are mandated by this Chapter and federal law to report suspected child abuse or neglect:
 - 1. All Tribal employees,
 - 2. Any physician, nurse, dentist, optometrist, or any other medical or mental health professional, including a community health representative;
 - 3. Volunteers of any social services outreach organization working intimately with families;
 - 4. Any school principal, teacher or other school official;

5. Social workers;
 6. Child day care center workers or
 7. Other child care staff including foster care parents and residential care or institutional personnel;
 8. Counselors or therapists; and
 9. Any peace officer or other law enforcement official.
- B. Any of the above persons shall report in the manner prescribed at C below where he or she has reasonable cause to suspect that:
1. A child may be abused, neglected or otherwise in need of care; or
 2. A woman is pregnant and has or is abusing alcohol or a controlled substance during pregnancy.
- C. Any of the above persons who have reasonable cause to suspect child abuse or neglect shall report his or her suspicion immediately:
1. By phone or otherwise to the Tribal human resource management organization or any other person with the authority to investigate or intervene; and
 2. Within seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, after making such report, file a written report.
- D. If the reporting person is a member of the staff of a Tribal hospital, agency, or school, the reporting person shall
1. Notify the person in charge of the hospital, agency, or school
 - a. Of the suspected condition and
 - b. Of the fact that the report has been made and
 2. Provide a copy of the written report to the person in charge.
 3. One (1) report from the hospital, agency or school, either by the party who originally formed the suspicion or the person in charge, to a Tribal human resource management organization or any other person with the authority to investigate or intervene shall be considered adequate to meet the reporting requirement.
 4. No member of the staff of a hospital, agency or school shall be dismissed or otherwise penalized for making a report or for cooperating in an investigation.

11-9-3. PRIVILEGED COMMUNICATIONS AND THE DUTY TO REPORT.

- A. The duty to report suspected child abuse or neglect shall prevail over any legal right to or immunity from prosecution for refusal to disclose privileged communications, except that between the advocate and party represented.
- B. The fact that the information leading to a reasonable cause to suspect child abuse or neglect resulted from a privileged communication shall not constitute grounds for
1. Excusing a report otherwise required nor
 2. Excluding evidence in a proceeding before the Children's Court resulting from a report.

11-9-4. PENALTY FOR NOT REPORTING. Any person, who knowingly fails to or willfully prevents someone else from reporting suspected child abuse or neglect, shall be subject to a charge of civil contempt with a penalty of:

- A. Up to three hundred sixty-five (365) days in jail and/or
- B. A fine of up to \$5,000.00.

11-9-5. PROCEDURES FOR SUSPECTED CHILD ABUSE OR NEGLECT IN EMERGENCY OR LIFE-THREATENING SITUATIONS.

- A. Any individual who has reasonable cause to suspect child abuse or neglect in which the child may be in an emergency or potentially life-threatening situation shall notify a Reservation Law Enforcement Officer.
- B. The Reservation Law Enforcement Officer shall investigate and verify the report.
- C. If the report is not verified, the Reservation Law Enforcement Officer shall notify the Presenting Officer and the case shall not proceed further.
- D. If the report is verified:
 - 1. The Reservation Law Enforcement Officer shall:
 - a. Notify the Tribal human resource management organization and
 - b. Take the child to the nearest hospital for examination, then
 - 2. The Tribal human resource management organization shall
 - a. Identify and arrange for emergency foster care and
 - b. Notify the Children's Court to request an emergency placement hearing.
 - 3. If the child is not hospitalized and foster care arrangements are finalized, the Reservation Law Enforcement Officer shall take the child from the hospital to the emergency foster home.

11-9-6. EMERGENCY PLACEMENT HEARINGS.

- A. An emergency placement hearing shall be held by the Children's Court within seventy-two (72) hours after the time the child was taken into custody by a Reservation Law Enforcement Officer.
- B. Emergency placement hearing reports shall be filed by:
 - 1. The Reservation Law Enforcement Officer,
 - 2. The Tribal human resource management organization, and
 - 3. Any agency initiating the original child abuse or neglect report.
- C. Emergency placement hearing reports shall be
 - 1. Filed with the Children's Court within seventy-two (72) hours after the child was taken into custody; and
 - 2. Include detailed information as to:
 - a. The facts leading to the reasonable cause to suspect child abuse or neglect,
 - b. All actions taken by the Law Enforcement Officer, Tribal human resource management organization, and any other involved individual or agency,
 - c. The name and location of and other details concerning the planned emergency placement, and
 - d. Any other relevant information that will enable the Children's Court to determine whether placement will be ordered.

3. The Clerk shall notify the Officer or agency if the emergency placement reports are not received within the required time frame.
- D. Attendance at the emergency placement hearing shall be required of
1. The Reservation Law Enforcement Officer,
 2. All agencies who submitted reports, and
 3. The parent(s) or guardian of the child.

11-9-7. DETERMINATION OF THE NEED FOR IMMEDIATE CHANGE OF DWELLING.

- A. Prior to the emergency placement hearing, the Children's Court shall order an immediate change of dwelling, such as temporary foster care of the home of relatives if the Children's Court finds such change is necessary.
- B. The order shall specify the date of the pending emergency placement hearing.

11-9-8. EVALUATION AND TREATMENT OF CHILD, PARENT, GUARDIAN, OR CARETAKER.

- A. Prior to the emergency placement hearing, the Children's Court shall order evaluation or treatment of the child or his or her parent(s), guardian, or caretaker, if the Children's Court finds such evaluation and treatment necessary.
- B. An order shall be issued specifying the services required and the agency designated to provide such services,
- C. A form authorizing necessary medical treatment shall be given by the Clerk to the agency which shall provide the services.

11-9-9. VERIFICATION OF CHILD ABUSE OR NEGLECT REPORTS WHERE CHILD APPEARS TO NOT BE IN IMMEDIATE DANGER.

- A. Individuals who suspect child abuse or neglect in which the child does not appear to be in immediate danger should report their suspicions to both the Presenting Officer and the Tribal human resource management organization.
- B. The Tribal human resource management organization shall attempt to verify the report.
- C. If the Tribal human resource management organization determines that an emergency life-threatening situation exists, a Reservation Law Enforcement Officer shall be immediately notified and the procedures outlined at § 11-9-6 shall be followed.
- D. In cases of verified but non-emergency or not life-threatening child abuse or neglect, the Tribal human resource management organization shall report its findings to the Children's Court and request a disposition hearing.
- E. If the report is not verified, the Tribal human resource management organization shall report its findings to the Presenting Officer and the case shall not proceed further.

11-9-10. COMMENCEMENT OF ACTIONS, PETITIONS AND PRELIMINARY INQUIRY.

- A. Proceedings in child welfare cases are commenced by petition.
- B. Any person, or the Children's Court on its own action, may file a petition.
- C. Any person may and any Reservation Law Enforcement Officer shall give the Children's Court any information in his or her possession that is or appears to be relevant to the possible filing of a petition by the Children's Court.
 1. Upon receipt of such information, the Children's Court may require that a preliminary

inquiry be made under the direction of the Children's Court to determine whether the interest of the child or the Tribe requires that further action be taken.

2. On the basis of the information that was received or which resulted from the preliminary inquiry, if any, the Children's Court may direct that a petition be filed.
- D. Notice of a petition shall be given to the child and the parent(s) or guardian of the child by attaching a copy of the petition to a summons.
- E. The summons shall set a date and time of an initial hearing to be held within ten (10) days of the filing of a petition.

11-9-11. PETITIONS, CONTENT.

- A. The petition shall set forth in simple and brief language the facts which bring the child before the Children's Court.
- B. The petition shall further state:
1. The name, age, gender, tribal affiliation, if any, and residence of the child;
 2. The names and residence of his or her parent(s) or guardian;
 3. The name and address of the nearest known relative if no parent(s) or guardian is known;
 4. If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state; and
 5. The identity of any known social services agency giving care and services to the child and his or her parent(s) or guardian; and
 6. The type of relief requested.

11-9-12. VERIFICATION OF PETITIONS.

- A. The petition shall be verified by affidavit.
- B. The statements in the petition may be made upon information and belief.

11-9-13. PETITIONS AND PROBATION OFFICERS. A petition may be prepared and filed by a Probation Officer when a child who is on probation violates the probation agreement due to apparent lack of parental supervision and control.

11-9-14. PETITIONS AND TEMPORARY CUSTODY. At any time after a petition is filed, the Children's Court may make an order providing for temporary custody of the child.

11-9-15. PETITIONS, DISMISSAL. The Children's Court may dismiss a petition at any stage of the proceedings.

11-9-16. EXAMINATIONS. After the filing of a petition:

- A. The Children's Court may:
1. Order that a child in question be examined by a physician, surgeon, psychiatrist or psychologist, and
 2. Place the child in a hospital or other facility for such examination.
- B. After due notice and a hearing, the Children's Court may order a similar examination of a parent(s) or guardian whose ability to care for a child is at issue.
- C. No information gathered can be used as evidence in any court proceeding in the Children's Court or the general Tribal Court.

- D. No information gathered shall be used for any purpose without specific authorization by the Children's Court through court order.

SECTION 10. PLACEMENT, CUSTODY, AND CARE, CONTROL, AND SUPERVISION OF CHILDREN.

11-10-1. CHILD PLACEMENT POLICY.

It is the policy of the Tribe that any out of home placement of a child, whether by the Children's Court or other court of competent jurisdiction shall be ordered only where the Children's Court deems that other alternatives, such as probation or protective supervision which would result in the child remaining in the home, are inadequate.

11-10-2. PARENT'S PREFERRED RIGHT TO CUSTODY. Before depriving any parent of the custody of his or her child, the Children's Court shall:

- A. Give due consideration to the preferred right of parents to the custody of their children, as expressed herein and
- B. Not transfer custody to another person, agency, or institution,
- C. Unless the Children's Court finds, after consideration of all the circumstances in the case, that the welfare of the child or the public requires that the child be taken from his or her home.

11-10-3. RESTRICTIONS ON PLACEMENT. A child alleged to be a neglected or dependent child shall not be placed in a jail or other facility intended or used for:

- A. The incarceration of adults charged with criminal offenses or
- B. The detention of children alleged to have committed acts which would constitute crimes if committed by adults.

11-10-4. PLACEMENT PRIORITIES. A child shall be placed in the following community-based options, listed in order of preference:

- A. Members of the child's extended family, who are members of the Tribe;
- B. Other members of the child's extended family;
- C. A member of the Tribe who is licensed by the Tribe as foster care home or otherwise authorized by law to provide care for the child;
- D. A facility operated by a licensed Indian child welfare services agency; or
- E. Any other suitable placement which meets the standards for shelter care facilities established by the Tribe.

11-10-5. PLACEMENT PREFERENCE FOR LEAST RESTRICTIVE AND CULTURALLY APPROPRIATE SETTING.

- A. If a child cannot be returned to the parent(s) or guardian, the child shall be placed in:
 - 1. The least restrictive setting
 - 2. Which most approximates a family and
 - 3. Where his or her needs may be met.
- B. Efforts shall be made to place the child in reasonable proximity to his or her home.
- C. If Reservation placement is not possible, efforts shall be made to place the child in a home or facility in:

1. The near vicinity of the Reservation or
2. Other areas in which culturally appropriate services are available consistent with the placement priorities described above.

D. Any placement shall take into account any special needs of the child.

11-10-6. CHILD ABUSE AND THE PERPETRATOR'S RESIDENCE. In cases of child abuse, if the alleged perpetrator is known and resides in the home of the victim,

- A. Such perpetrator shall be removed from the home if the child's case plan requires that the child return to his or her home and
- B. The child shall remain under the care and supervision of a Tribal human resource management organization.

11-10-7. PROCEEDINGS TO RETURN CUSTODY TO PARENT OR GUARDIAN.

- A. A parent(s), or guardian whose legal custody has been transferred by the Children's Court to an individual, agency, or institution, except a reform school,
 1. May petition the Children's Court for restoration of custody or other modification or revocation of the decree,
 2. On the ground that a change of circumstances has occurred,
 3. Which requires such modification or revocation in the best interest of the child or the public.
- B. Upon such petition, the Children's Court shall:
 1. Make preliminary investigation,
 2. Dismiss the petition if it finds that the alleged change of circumstances, if proved, would not affect the decree,
 3. If the Children's Court finds that a further examination of the facts is necessary,
 - a. Conduct a hearing upon due notice to all persons concerned, and
 - b. Enter an order continuing, modifying or terminating the decree; or
 4. On its own motion, determine that the decree shall be reviewed.

11-10-8. LIMITATION ON PARENT'S RIGHT TO REGAIN CUSTODY. No petition by a parent(s) may be filed under the preceding Section after his or her parental rights have been terminated in accordance with § 11-11-1, *et seq.*

11-10-9. DUTIES AND RESTRICTIONS OF AN INDIVIDUAL WITH LEGAL CUSTODY.

- A. An individual granted legal custody shall exercise the right and responsibilities involved in legal custody personally, unless otherwise authorized by the Children's Court.
- B. If an individual awarded legal custody of a child desires to move his or her and the child's residence from the Reservation, he or she must obtain the approval of the Children's Court prior to removing the child from the Reservation.

11-10-10. CARE, CONTROL, AND SUPERVISION PREFERRED. The Tribe prefers that where a child is placed with an agency or institution, such placement:

- A. Shall not vest legal custody in the agency or institution,
- B. But, shall vest only the right to care, control, and supervision, which is defined herein,

- C. Unless the Children's Court determines:
 - 1. That the agency or institution does not accept placement without the vesting of legal custody over children,
 - 2. No alternative agency or institution is available for placement, and
 - 3. Placement in an agency or institution is of the utmost necessity.

11-10-11. DUTIES AND RESTRICTIONS OF AN AGENCY WITH LEGAL CUSTODY.

- A. Whenever legal custody of a child is vested in an institution or agency, the Children's Court shall transmit with the order vesting custody copies of any reports and other information pertinent to the care and treatment of a child.
- B. Upon the request of the Children's Court, which may be made at any time, the institution or agency shall give the Children's Court information concerning the child.
- C. The Children's Court may prohibit the transfer of the child outside of the State of New Mexico or from one home to another without the approval of the Children's Court.

11-10-12. MODIFICATION AND REVOCATION OF CUSTODY ORDERS.

- A. An individual, agency, or institution vested with legal custody of a child may petition the Children's Court for a modification or revocation of the custody order on the ground that such change is necessary for the welfare of the child or in the public interest.
- B. The Children's Court shall proceed upon such petition in the same manner as upon a petition filed under § 11-10-7 of this Chapter.

11-10-13. INTERGOVERNMENTAL AGREEMENTS AND PLACEMENT OF CHILDREN WITH AGENCIES OR INSTITUTIONS. The Children's Court may negotiate any agreements providing for the sharing of information; review, modification, and termination of placement orders; and other details concerning the placement of children with agencies or institutions provided that such agreements do not conflict with the provisions provided herein and are approved by the Tribal Council

11-10-14. CASE PLAN.

- A. No child before the Children's Court shall be placed by the Children's Court without the formulation of a case plan, with the exception of a child who is accused of having violated any applicable federal, state or municipal law, or the Tribal Code.
- B. The Tribal human resource management organization shall
 - 1. Prepare a written case plan and
 - 2. Present the case plan to the Children's Court, advocate for the child, if any, and the Presenting Officer, at least three (3) days before the placement hearing.
- C. The case plan shall contain:
 - 1. Descriptions of all reasonable and appropriate alternative dispositions,
 - 2. A detailed explanation of the necessity for the proposed case plan and its benefits to the child,
 - 3. A specific plan for the care and aid to be provided to the child and his or her parent(s), guardian, or caretaker designed to resolve the problems presented in the petition,
 - 4. If the report recommends placement of the child somewhere other than with the child's parent(s), guardian, or caretaker, the specific reasons underlying its placement recommendation, including any reason for deviating from the placement priorities and

standards defined in this Chapter.

11-10-15. DISPOSITION ORDERS.

- A. No child coming before the Children’s Court shall be placed in an out of home placement or returned to his or her parent(s), guardian, or caretaker without a disposition order, with exception of a child who is accused of having violated any applicable federal, state or municipal law, or Tribal Code.
- B. The disposition order shall state whether reasonable efforts have been made to:
 - 1. Prevent the child’s removal from the home, or
 - 2. Rectify the conditions that caused the child’s removal from the home.
- C. If a child has been found to be neglected or dependent, the Children’s Court may make the following dispositions, consistent with the placement preferences and standards described in this Chapter:
 - 1. Permit the child to remain with his or her parent(s), guardian, or caretaker subject to such conditions as the Children’s Court may prescribe;
 - 2. Place the child, subject to such conditions as the Children’s Court may prescribe:
 - a. With a relative,
 - b. In a licensed foster home, or
 - c. In group home or residential care facility, or
 - 3. Direct the Presenting Officer to file a petition to terminate parental rights.
- D. A disposition order may be amended or modified at any time as the Children’s Court determines necessary.

11-10-16. DISPOSITION REVIEW HEARING. Any disposition order issued by the Children’s Court shall be subject to disposition review as follows:

- A. The disposition order is to be reviewed at the discretion of the Children’s Court but at least once every six (6) months.
- B. At a disposition review hearing, the Children’s Court shall review, on the record, compliance with the case plan the previous orders of the Children’s Court, and other issues including:
 - 1. Services provided or offered to the child and the parent(s), guardian, or caretaker and whether the child, parent(s), guardian, or caretaker benefited from those services.
 - 2. If the parents did not arrange for visitation or if visitation was infrequent, the Children’s Court shall review the circumstances leading to lack of or infrequent visitation.
- C. After review of the case plan, the Children’s Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain neglected or dependent.
- D. The Children’s Court may modify any part of the case plan by, but is not limited to:
 - 1. Prescribing additional:
 - a. Services that are necessary to rectify the conditions that cause the child to come before the Children’s Court;
 - b. Additional actions to be taken by the parent(s), guardian, or caretaker to rectify the conditions that caused the child to come before the Children’s Court; and

2. Issuing an order permitting the agency to return the child to the home if:
 - a. No fewer than twenty (20) days' notice of the intent to return the child to the home is given to all parties and
 - b. No party requests a hearing within the twenty (20) days.
- E. The Children's Court shall determine the continuing necessity and appropriateness of the child's placement and as appropriate:
 1. Order the return of the child to the custody of the parent(s), guardian, or caretaker,
 2. Continue the disposition order,
 3. Modify the disposition order, or
 4. Enter a new disposition order.
- F. If the child remains in placement, the Children's Court shall determine at the disposition hearing and at each review hearing whether the cause should be reviewed before the next review hearing by considering:
 1. The parent's, guardian's, or caretaker's ability and motivation to make necessary changes to provide a suitable environment for the child;
 2. Whether there is a reasonable likelihood that the child may be returned to the home prior to the next review hearing; and
 3. Whether a placement which better meets the placement priorities of this Chapter is available and in the best interests of the child.

11-10-17. PERMANENCY PLANNING HEARING.

- A. If a child remains in placement or neglected or dependent and parental rights to the child have not been terminated, the Children's Court shall conduct a permanency planning hearing:
 1. Not more than eighteen (18) months after entry of the order and
 2. Every eighteen (18) months thereafter, so long as the child remains under jurisdiction of the Children's Court,
 3. To review the status of the child and the progress made toward the child's return to the natural parent(s) or some other permanent home.
- B. A permanency planning hearing may be combined with a disposition hearing under this Chapter.
- C. The Children's Court shall order the child returned to his or her parent(s), guardian, or caretaker,
 1. If parental rights to the child have not been terminated and
 2. The return of the child would not cause a substantial risk of harm to the child's life, physical health or mental well-being.
 3. In determining whether the return of the child would cause a substantial risk of harm, the Children's Court shall consider the failure of the parent(s), guardian, or caretaker to substantially comply with the conditions of the case plan and disposition orders as evidence that return of the child would cause such harm.
- D. If the Children's Court determines that the child should not be returned to the parent(s), guardian, or caretaker the Tribal human resource management organization shall propose one of the following permanent placement plans consistent with the placement preferences and standards of this Chapter and the best interests of the child:

1. That the child be placed permanently with a relative within the Reservation;
 2. That the child be placed permanently with a relative who is outside the Reservation;
 3. That the child remains in long-term foster or residential care;
 4. That a petition for guardianship be filed by the current caretaker of the child, the child, or by the Presenting Officer on behalf of the Tribal human resource management organization.
 5. That a petition to terminate parental rights be filed by the Presenting Officer.
- E. If the Children's Court determines that the child should not be returned to the parent(s), guardian, or caretaker, the Children's Court shall order permanent placement with a relative or long term foster or residential care.

SECTION 11. TERMINATION OF PARENTAL RIGHTS.

11-11-1. TERMINATION OR PARENTAL RIGHTS.

- A. If the proceedings comply with § 10-1-1, *et seq.*, the Children's Court may dispose of a case by issuing a decree terminating parental rights.
- B. The rights of one parent may be terminated without affecting the rights of the other parent.

11-11-2. PARENTAL RIGHTS, GROUNDS FOR TERMINATION. The rights of the parent(s) may be terminated if the Children's Court finds:

- A. That the parent(s) is unfit and incompetent by reason of conduct or condition seriously detrimental to the child; or
- B. That the parent(s) has abandoned or neglected the child; or
- C. That after a period of trial,
 1. During which the child was
 - a. Kept in his or her own home under protective supervision or probation, or
 - b. During which the child was returned to live in his or her own home,
 2. The parent(s) substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

11-11-3. STANDARD OF PROOF. No parent shall have his or her parental rights terminated without a preponderance of the evidence showing that the parent(s):

- A. Are unfit and incompetent by reason of conduct or a condition that is seriously detrimental to the child or
- B. Have abandoned or neglected the child.

11-11-4. PROCEDURE FOR TERMINATING PARENTAL RIGHTS.

- A. A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent(s).
 1. A verbatim record of the proceedings must be taken.
 2. The parent(s) must be advised of his or her right to appoint a lay advocate at his or her own expense.
 3. No hearing shall be held earlier than ten (10) days after personal service of summons is completed inside or outside of the Reservation.

- B. The original or a subsequently issued summons shall contain
 - 1. A statement that the parental rights of the parent(s) may be permanently terminated and
 - 2. The grounds upon which termination is sought.

11-11-5. PARENTAL RIGHTS, ORDER TERMINATING AND APPEALS. Every order terminating the rights of one or both parents shall:

- A. Recite the facts upon which the Children’s Court bases its jurisdiction over the child and
- B. Include the findings upon which the decree is based.
- C. Unless there is an appeal within thirty (30) days from the entry of the order, the order shall permanently terminate all rights of the parent(s).

11-11-6. DISPOSITION AFTER TERMINATION OF PARENTAL RIGHTS. Upon the entry of an order terminating the rights of the parent(s), the Children’s Court shall place the child for adoption as provided at Chapter 4 of the Tribal Code, or make any other disposition of the child authorized under this Chapter.

11-11-7. PARENTAL RIGHTS, RIGHTS OF NON-TERMINATED PARENT.

If the rights of only one parent have been terminated, the right of the other parent to consent to adoption is not affected by an order placing the child for adoption as provided in the preceding Section.

11-11-8. PARENTAL RIGHTS, VOLUNTARY SURRENDER.

Nothing contained herein shall preclude a parent(s) from surrendering permanent legal custody voluntarily, by a written instrument, duly acknowledged, for purposes of adoption, and in accordance with Chapter 4 of the Tribal Code.

SECTION 12. IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

11-12-1. RECEIPT OF NOTICE.

- A. The Executive Secretary of the Tribe shall be the agent for service of all notices, required by ICWA regarding state court custody proceedings that may involve a child who is a member or is eligible to become a member of the Tribe.
- B. The Census Clerk shall provide a copy of the notice to the Presenting Officer within three (3) days after receipt.

11-12-2. ORDER DECLARING THAT THE TRIBE IS AN INTERESTED PARTY.

- A. If a child, that is identified in an ICWA notice, is or is eligible to become a Tribal member, the Presenting Officer shall file an order in the Children’s Court requesting that the Children’s Court declare that the Tribe is an interested party in the state court’s custody proceeding.
- B. The Children’s Court shall issue such order and forward it to the state court for domestication.

11-12-3. INVESTIGATION REPORT AND REQUEST FOR TRANSFER.

- A. The Tribal human resource management organization shall conduct an investigation and file a written report with the Presenting Officer.
- B. The Presenting Officer shall:
 - 1. Make written recommendations on whether or not the Tribe should petition for transfer from state court, and
 - 2. Consider these factors:

- a. The best interests of the child;
- b. The best interests of the Tribe;
- c. The availability of services for the child and the family;
- d. The prospects for permanent placement ~~for~~ of the child; and
- e. The conservation of Tribal resources.

11-12-4. MOTION TO INTERVENE. The Presenting Officer shall file, in state court, a motion to intervene upon determination that the best interests of the child and the Tribe require intervention.

11-12-5. PETITION FOR TRANSFER. The Tribal petition for transfer shall be filed in the state court by the Presenting Officer in conjunction with the Tribe’s General Counsel.

11-12-6. HEARINGS UPON GRANT OF TRANSFER REQUEST BY STATE COURT. Upon receipt of transfer jurisdiction from state court, the Children’s Court shall hold appropriate proceedings in accordance with this Chapter.

SECTION 13. LICENSING STANDARDS FOR FOSTER CARE

11-13-1. GENERAL PROVISIONS.

A. **PURPOSE.** These Mescalero Apache Foster Home Licensing Program (MAFHLP) Parent Policies and Procedures (Policies and Procedures) establish uniform criteria for selecting and certifying prospective Mescalero Apache Foster (MAF) Parents which are consistent with the best interests, safety, permanency, and well-being of Mescalero Apache children and the Mescalero Apache Tribe as a whole. These Policies and Procedures clearly detail the duties, responsibilities, and rights of prospective and licensed MAF Parents.

B. **DEFINITIONS.**

1. “Applicant” is any person who applies to become an MAF parent.
2. “Child” or “foster child” means a child that is in the custody of the Tribal Court and has been placed in a MAFHLP licensed foster home.
3. “Child abuse and neglect check” is a review of the BIA, New Mexico or another state’s or tribe’s central abuse or neglect registry to determine if there have been any previous reporting as to the MAF Parent.
4. “Criminal records check” or “CRC” means Tribal, other tribal, federal, state or local checks for criminal offenses conducted by MAFHLP.
5. “Home study” is the final written document that results from the assessment process to determine the suitability of an Applicant for a foster parent license.
6. “Kinship” means the relationship that exists between a child and a relative of the child, a godparent, a member of the child’s tribe or clan, or an adult with whom the child has a significant, long-term bond.
7. “License” is the document which bears the name or names and address or addresses of those who may act as foster parents to children in the custody of the Tribal Court.
8. “MAF Parent” is the person named on the license issued by the MAFHLP who is authorized to care for foster children.
9. “MAF Parent Application” or “Application” is the document by which a person requests an assessment of his or her home and family in order to receive a license to provide foster care. The document also authorizes the MAFHLP to obtain relevant information from the

Applicant and other persons in order to conduct an assessment of the Applicant's qualifications.

10. "MAFH" or "foster home" refers to a home licensed by MAFHLP to provide foster care services.
11. "MAFHLP" means the Mescalero Apache Foster Home Licensing Program.
- 1.2 A "provisional license" means a license that is time limited and allows a relative or non-relative with a kinship relationship to a child to care for a child after certain basic safety checks have been completed.
13. "Relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, any person denoted by the prefix "grand" or "great," or the spouse or former spouse of the persons specified.

C. LICENSE REQUIREMENT.

1. Each child in the custody of the Mescalero Apache Tribal Court that is to be placed in individual foster care must be placed with a foster parent licensed by the MAFHLP.
2. However, this does not preclude the Tribal Court from ordering an emergency placement with a relative pursuant to the Tribal Code at Chapter 11, Section 9.

D. PROVISIONAL LICENSES.

1. A provisional license may be issued to a relative or non-relative with a kinship relationship to a child prior to the completion of the foster care licensing process provided that the MAFHLP Specialist:
 - a. Completes an initial assessment of the child's attitude toward and relationship with the prospective MAF Parent; and the prospective MAF Parent's attitude toward the child, motivation to foster the child, and ability to safely parent the child;
 - b. Performs a criminal records check and a check of the prospective MAF Parent's child abuse and neglect referral history; and
 - c. Completes a cursory safety check of the home for obvious safety issues.
2. Provisional licenses are limited to sixty (60) days except as provided below:
 - a. One thirty (30) day extension may be made at the discretion of the MAFHLP Specialist.
 - b. When a child is placed under a provisional license, the prospective MAF Parent will be expected to complete all requirements for MAFHLP licensing within sixty (60) days of placement.
 - c. In the event that the relative or non-relative is not licensed before the provisional license and any extension expires, then any child placed in the home will be removed.

E. ADOPTION. An MAF Parent may petition the Tribal Court to adopt a foster child. Such prospective adoption shall be governed by Chapter 4 of the Tribal Code. Where an adoption is finalized by the Tribal Court, then neither the adopting individual nor the child that is adopted shall be eligible for foster care assistance through the BIA-Social Services.

11-13-2. MAF PARENT QUALIFICATIONS, INQUIRIES & RECRUITMENT

- A. **MINIMUM QUALIFICATIONS.** Each MAF Parent must:
1. Be age:
 - a. Twenty-one (21) years or older; or
 - b. Eighteen (18) years or older where the licensure is in the best interests of a particular foster child as determined by the MAFHLP Specialist on a case-by-case basis (for example, the MAFHLP may wish to license an otherwise qualified older sibling of a foster child that is under the age of twenty-one years (21));
 2. Be a legal resident of the United States and a resident of the Mescalero Apache Indian Reservation or Lincoln or Otero County. In cases of kinship foster placements, the MAFHLP may license a relative or other person with a kinship relationship to a foster child that lives elsewhere in New Mexico or a neighboring state. The MAFHLP shall license such individuals on a case by case basis;
 3. For a BIA employee or MAFHLP staff, not be assigned as the caseworker for the foster child;
 4. Not have child(ren) who are currently in foster care. A person whose child(ren) were in foster placement at some point in the past may be licensed if the MAFHLP determines that the problems leading to such placement(s) have been resolved and are not likely to recur;
 5. Not have been or currently live with another individual that has been convicted of a felony, a serious offense involving child abuse/neglect or violence, or a sex offense within the last seven (7) years;
 6. Have sufficient income, apart from the BIA foster care reimbursement, to support him- or herself, his or her family and any foster child(ren) in his or her care; and
 7. Be willing to sign and comply with the MAF Parent Agreement. The Agreement is described in more detail in these policies and procedures.
- B. **TYPE OF FAMILY.** An MAFC family may include a single parent, a married couple or an unmarried couple.
- C. **INQUIRIES.**
1. Inquiries regarding prospective foster home licensing will be directed to the MAFHLP Specialist during normal business hours. Acceptable inquiry sources include: other foster parents, BIA-Social Services, other social workers, and self- referrals.
 2. The MAFHLP Specialist will conduct a brief phone screening with the prospective Applicant to discuss initial eligibility criteria, the licensing process, and assess his or her seriousness in becoming a foster parent.
 3. Information from this phone screening will be documented on the MAFH Parent Inquiry Tracking Form.
 4. If not already submitted, the MAFHLP Specialist will request a completed MAF Parent Application from the prospective MAF parent.
- D. **RECRUITMENT**
1. The MAFHLP will recruit individuals who demonstrate the desire and ability to care for children in Mescalero Apache Tribal Court custody.
 2. The MAFHLP will focus recruitment efforts on finding prospective MAF Parents

residing on the Mescalero Apache Indian Reservation and in Lincoln and Otero County.

3. The MAFHLP Specialist will oversee all recruitment efforts. Recruitment of prospective MAF Parents will be accomplished utilizing the following methods:
 - a. Area media, including newspapers, television, and radio;
 - b. Contacts with staff of community agencies providing services to children and their families;
 - c. Written and verbal contacts with community institutions such as churches, service organizations, etc.; and
 - d. Additional methods may be used depending on need and other circumstances.

11-13-3. APPLICATION & ORIENTATION

- A. **PURPOSE.** The MAF Parent Application approval process is designed to gather information and to prepare prospective MAF parents by identifying strengths and gaining skills related to the unique challenges MAF Parents can anticipate.
- B. **APPLICATION.** The first step in the process is for each prospective MAF Parent to complete, sign and date the MAF Parent Application. The MAF Parent Application must include the following:
 1. Demographic data including the name, address, telephone number, and the date of birth of all persons living in or frequently residing in the home;
 2. Previous residential addresses for the past five (5) years, including the dates the prospective MAF Parent lived at each address;
 3. A three (3) year employment history preceding the date of the Application;
 4. A statement from the prospective MAF Parent asserting that, if approved for a license, the prospective MAF Parent will adhere to all applicable statutes and regulations applying to foster homes and he or she will:
 - a. Work with each foster child and family on reunification or alternate case plan;
 - b. Work with BIA-Social Services to ensure placement stability, such as accepting only children who can remain in the placement until adopted or discharged from care;
 - c. Ensure the safety of each foster child; and
 - d. Adhere to all responsibilities set forth in the MAF Parent Agreement;
 5. The names, addresses and telephone numbers of three (3) non-related persons who have knowledge of the prospective MAF Parent's character and suitability to be a foster parent;
 6. The names and ages of all minor children currently living in the home;
 7. The names, addresses, and telephone numbers of all minor or adult children living outside of the home;
 8. A statement of monthly income and regular expenditures;
 9. Information regarding past or present medical conditions and hospitalizations, including any institutionalization or treatment for behavioral disorders for all adults living in the home;

10. A summary of current and past marriages and significant adult interpersonal relationships;
 11. A history of any foster care parent application or licensure in this or any other state; if such history exists, a BIA-Social Services approved notification form signed by the prospective MAF Parent that will serve the purpose of notifying the previous agency of the prospective MAF Parent's application to become licensed through the MAFHLP and allow the release of assessment information and past home studies to MAFHLP;
 12. A history of all arrests and convictions in any court and referrals to any state or tribal child welfare agency; and
 13. A certification statement that the information provided in the MAF Parent Application is true, complete, and contains no willful misrepresentation.
- C. **ADDITIONAL REQUIRED DOCUMENTS.** In addition to a completed and signed MAF Parent Application, the prospective MAF Parent must also submit:
1. A release of medical information form;
 2. A signed Federal HIPAA notice of privacy practices;
 3. A finger print card, provided by the MAFHLP, bearing a complete set of his or her finger prints; and
 4. A completed MAFHLP questionnaire.
- D. **NOTIFICATION OF PROSPECTIVE MAF PARENT.** Upon receipt of the MAF Parent Application, the MAFHLP Specialist shall contact the prospective MAF Parent within five (5) days in regard to issues with the Application and/or to establish a time/location for orientation.
- E. **ORIENTATION**
1. Each prospective MAF Parent will attend an orientation *prior* to participating in the home study process.
 2. At the orientation, the MAFHLP will discuss the following with each prospective MAF Parent:
 - a. The MAFHLP mission statement and foster care program description;
 - b. Basic information regarding how a child typically enters and experiences foster care (e.g. typical reasons, MAFHLP/BIA-Social Services functions and procedures, court proceedings, etc.);
 - c. The goal of permanency for the child(ren) and its importance;
 - d. The duties and rights of the MAF Parent as detailed in these policies and procedures; and
 - e. The overall licensing process.
 3. In addition, each prospective MAF Parent will be asked to examine his or her values, experience, and lifestyle in relation to the kind of child that he or she might best serve.
 4. The prospective MAF Parent will be asked to look at his or her current family, extended family, community, the supports he or she has at the time and the supports and resources he or she may need to develop.
 5. Further, he or she will be asked to look back at his or her family history to identify recurring family themes that might assist them in parenting a particular child or which

may present unique challenges to parenting some foster children.

11-13-4. PARENT TRAINING

- A. PRE-LICENSING TRAINING. Each prospective MAF Parent that successfully completes orientation must complete a twelve (12) hour Pre-Licensing Training prior to being licensed by the MAFHLP.
- B. POST-LICENSING TRAINING.
 - 1. All foster parents licensed by MAFHLP shall participate in at least six (6) hours of MAFHLP approved training each year.
 - 2. An MAF Parent may be required by the MAFHLP to participate in special training for the unique needs of a particular child.
- C. COSTS RELATED TO TRAINING
 - 1. Training provided directly by the MAFHLP shall be available to MAF Parents at no charge.
 - 2. Costs related to training provided by an agency, entity or organization other than the MAFHLP is the MAF Parent's responsibility unless prior arrangements have been made with MAFHLP.
 - 3. Travel expenses and childcare costs related to training are the responsibility of the MAF Parent.
- D. FIRST AID & CPR CERTIFICATION. Each MAF Parent must:
 - 1. Complete first aid and CPR training, and obtain certification in each, prior to licensure; and
 - 2. Maintain his or her certification for both first aid and CPR during the entirety of his or her licensure. The failure to maintain certification will result in suspension or revocation of his or her license.
- E. RECORDS OF TRAINING & CERTIFICATION
 - 1. Each MAF Parent will provide a copy of his or her certificate of completion of training and provide documentation listing the dates and hours of the training and the educational components of the class.
 - 2. Each MAF Parent must provide a copy of his or her certification for first aid and CPR.
 - 3. The MAFHLP Specialist will enter and monitor all MAF Parent training hours and certification on a training and certification log.
 - 4. At least once annually, MAFHLP will meet with BIA-Social Services in order to review MAF Parent training and certification compliance. Additionally, the training and certification log will be reviewed prior to an MAF Parent's re-licensure.
- F. FAILURE TO MEET TRAINING REQUIREMENTS.
 - 1. The MAFHLP Specialist will provide written notification to the MAF Parent if he or she is not in compliance with training or certification requirements.
 - 2. The written notification will establish a deadline by which the MAF Parent must complete such training or obtain certification.
 - 3. If training is not complete or certification is not obtained by the deadline, then the notice must inform the MAF parent that he or she may have his or her license suspended or

revoked.

11-13-5. HOMESTUDY.

A. GOALS OF THE HOME STUDY

1. A home study will be conducted for each prospective MAF Parent to assess his or her home and also his or her suitability to care for children who might be placed in their home.
2. The home study includes an assessment of factors that may impact the ability of prospective MAF Parents to provide care, protection, and experiences that enhance healthy development including: personal characteristics; motivation for providing foster care; willingness to provide care for a child of a different gender, race, ethnicity, culture, or sexual orientation; family and marital functioning; mental health; parenting skills; social support networks; and the home environment.

B. BASIC REQUIREMENTS.

1. Only the MAFHLP Specialist or MAFHLP-approved BIA-Social Services staff or other trained individuals shall conduct home studies.
2. Previous foster care assessments performed by the MAFHLP, other tribal agency, or state agency will be considered in determining suitability of a prospective MAF Parent.
3. The home study will be scheduled to occur after orientation. The home study must be completed within one hundred and twenty (120) days.
4. A home study must be completed prior to placement.
5. Home studies must be updated within two (2) weeks of a reported change in the home composition and at least once (1X) annually. In the case of a change, a new home study or an addendum to the original home study will be completed.
6. The MAF Parent must complete another MAFHLP questionnaire (to supplement that required to be submitted with the MAF Parent Application).

C. INTERVIEWS.

1. As a part of the home study, the MAFHLP Specialist will conduct a personal interview with each adult child of the Applicant who does not live in the Applicant's home and a personal interview with each member of the Applicant's household, including children. The purpose of interviews is to assess:
 - a. Parenting history;
 - b. The attitude of each member of the household toward the placement of a foster child into the home;
 - c. Ability to accept a foster child's relationship with his or her biological family;
 - d. Ability to assess and use appropriate community resources; and
 - e. Ability to be culturally sensitive and to develop cultural competence with respect to the foster child.
2. If any member of the household should decline to be interviewed, then the prospective MAF Parent will not be licensed.

D. PROOF OF IDENTITY. As a part of the home study, the MAFHLP Specialist will obtain proof of the prospective MAF Parent's:

1. Identity and residency (federal, tribal or state issued photo identification card);
 2. United States citizenship (birth certificate and/or social security card, or legal alien status, such as a permanent resident card); and
 3. Age (birth certificate or driver's license).
- E. **MARITAL STATUS.** If any, the MAFHLP Specialist will obtain proof from the prospective MAF Parent of:
1. Any previous divorce(s) or legal separation(s) (a copy of any divorce or legal separation decree);
 2. The death of a spouse (death certificate); or
 3. Present marriage (marriage certificate).
- F. **HEALTH ASSESSMENT**
1. The prospective MAF Parent must obtain and submit a health assessment report on a form provided by the MAFHLP certifying that all household members, including children, are in good mental and physical health with a statement from the physician as to whether any medical conditions may affect the prospective MAF Parent's ability to care for a foster child.
 2. All costs associated with the health assessment report are to be paid by the prospective MAF Parent.
 3. The health assessment report must be dated within six (6) months of the MAF Parent Application.
 4. The health assessment report must include a list of any prescribed medications and the reasons for which the same are prescribed.
 5. In addition, immunization records or a waiver issued by the appropriate government agency will be requested for each child residing in the home.
- G. **APTITUDE FOR ADMINISTERING MEDICATION.** Prior to licensure, each prospective MAF Parent must show an aptitude for being able to administer medication to a foster child as prescribed.
- H. **REFERENCES.** The prospective MAF Parent must provide three (3) non-relative references. The MAFHLP Specialist will interview each reference listed in person or by telephone.
- I. **BACKGROUND CHECKS.** The MAFHLP Specialist will ensure that criminal record checks and child abuse/neglect checks are completed for the prospective MAF Parent and all adult members of the household.
- J. **PERSONAL OBSERVATION.** The MAFHLP Specialist will conduct at least two (2) visits to the prospective foster home and document personal observations as to interpersonal relationships and patterns of interaction in the household.
- K. **EDUCATION.** The MAFHLP Specialist will obtain proof of school enrollment or home schooling for all school aged children residing in the prospective foster home.
- L. **MATCH ASSESSMENT**
1. The MAFHLP Specialist will complete a "match assessment" with the prospective MAF Parent in order to document any behaviors, handicaps, medical needs, or other considerations with which he or she does not feel comfortable. As a part of such assessment, MAFHLP will respect the families' desires and document such desires in the

home study.

2. If the prospective MAF Parent does not specify certain behaviors with which he or she will not work, then the MAFHLP Specialist will consider the parent willing to work with any child and will state the same in the home study.
3. If the MAFHLP Specialist discovers through training and/or the home study process that the prospective MAF parent will have a difficult time meeting certain needs, then the MAFHLP Specialist and/or BIA Social Services will discuss this with the prospective MAF Parent and indicate in the home study that such discussions took place.

M. HOME SAFETY. The MAFHLP Specialist will also conduct a home inspection to verify that the following home safety requirements are met:

1. Heating, cooling, and ventilation:
 - a. The home must be adequately ventilated. Specifically, there must be an effective means of providing fresh air to the MAF child's bedroom. The child's bedroom must have at least one window;
 - b. Fuel-burning equipment, including natural gas or liquid propane gas cooking ranges must be vented appropriately;
 - c. Heating/cooling equipment must be able to maintain an interior house temperature of 65 degrees Fahrenheit in all rooms and all gas furnaces must have a cut-off valve; and
 - d. Heating systems and associated equipment must meet all requirements of applicable safety codes;
2. Water:
 - a. The foster home must have an adequate supply of sanitary water;
 - b. If water is not obtained from a public supply, a well water certificate from the appropriate government agency must be provided at initial licensure and at five (5) year intervals. Bottled water may be used for cooking and drinking if the water source is determined to be unsuitable;
 - c. Water supply piping and associated equipment must be installed and maintained in compliance with applicable safety codes; and
 - d. There must be a pop-off valve on the hot water heater;
3. Sewage, waste and sanitation:
 - a. The foster home must be kept clean and free of accumulation of dirt, waste, and infestations of insects and rodents;
 - b. Toilet and bathing facilities must be provided and maintained in a sanitary manner;
 - c. Sanitary methods of household waste disposal must be present and meet applicable safety codes; and
 - d. The foster home must be free of clutter that may cause tripping or falling hazards;
4. Electrical wiring and communication:
 - a. Electrical wiring must comply with applicable safety codes. If the MAFHLP

- Specialist has doubt of the adequacy of electrical wiring, then the prospective MAF Parent must arrange and pay for an electrical inspector to inspect the wiring and submit a report to the MAFHLP Specialist;
- b. Electrical extension cords are not to be used for general wiring; and
 - c. A readily available home telephone (land-line) must be available and operational in case of emergencies;
5. Kitchen and food storage:
- a. The foster home must have a kitchen with sufficient storage space. Food must be stored separately from cleaning supplies and other household chemicals;
 - b. The kitchen must be equipped with a refrigerator sufficient to maintain cold food storage in a temperature range between 33 degrees and 45 degrees Fahrenheit; and
 - c. Kitchen and food preparation equipment and storage must be maintained in a sanitary condition.
6. First aid supplies and prescription medications:
- a. There must be first aid supplies in the foster home. First aid supplies must be stored in a single cabinet or kit that is separate from food storage or household cleaning supplies or other chemicals. Such supplies must include, at a minimum:
 - i. One box of non-medicated adhesive bandages;
 - ii. One pair of blunt scissors;
 - iii. One roll of two (2) inch or three (3) inch adhesive roller bandage;
 - iv. One roll of one-half (1/2) inch adhesive tape;
 - v. One box of sterile first aid dressings in sealed envelopes; and
 - vi. First aid cream and/or ointment;
 - b. Prescription medicines must be:
 - i. Supplied in types and amounts as prescribed by a licensed physician;
 - ii. Properly labeled;
 - iii. Stored separately from food, cleaning agents, or other household chemicals;
 - iv. Administered only as prescribed; and
 - v. Disposed of in an appropriate manner after the prescribed course of treatment has been completed;
7. Personal items:
- a. Each foster child must be provided with an individual comb, toothbrush, night clothes, and undergarments which shall not be interchanged with other household members; and
 - b. All linens and bedding must be stored and maintained in a manner that assures that the same will remain clean. Linens and bedding must be laundered before use;

8. Pets and other animals: any pets and other animals, including farm animals, must be in good health. The prospective MAF Parent must provide documentation of current vaccinations and other registration or licenses required by applicable law. Any pets and other animals must have a temperament that is not frightening or hazardous to children;
9. Foster home space, furnishing and sleeping arrangements:
 - a. The foster home must have a separate bedroom for child, which is separate from that of the prospective MAF Parent and any other adults living in or frequently residing in the home. A foster child under the age of eighteen (18) months may sleep in the same room with his or her MAF Parent provided that there is a separate bedroom for the foster child when he or she reaches the age of eighteen (18) months;
 - b. There must be a separate bed provided for each foster child, except that two (2) children of the same gender may sleep in the same double bed;
 - c. The MAFHLP Specialist may allow exceptions to the sleeping arrangement requirements to permit placement of siblings together in the same foster home;
 - d. The bedroom for the foster child must be a contiguous part of the main family residential building or apartment. An exceptions may be made for a foster child over sixteen (16) years of age who is preparing for independent living;
 - e. There must be sufficient closet space or furniture storage space to permit the sanitary storage of children's clothes and other personal items; and
 - f. Furnishings must clean and maintained in a sanitary condition at all times;
10. Doors and locks:
 - a. The foster home must have at least two (2) designated exits that meet fire code standards;
 - b. There must not be any interior door locks that make it possible for a child to be locked inside. All privacy locks must have emergency unlocking mechanisms;
11. Yard and play space:
 - a. There must be safe indoor and outdoor designated play areas;
 - b. In areas which have a high density of traffic or other hazards to children, the yard or play space must be adequately fenced for the child's protection; and
 - c. All outdoor play toys, swings, and other play equipment must be maintained in a state of repair and free of projecting sharp edges, splinters or other hazards to children; and
12. Other safety issues:
 - a. If the prospective MAF Parent operates an automobile, then he or she must comply with the transportation regulations listed in these policies and procedures;
 - b. The foster home must have age appropriate safety gates and locking mechanisms for cabinets that contain cleaning agents or chemicals;
 - c. There must be at least one fire extinguisher;
 - d. The number of smoke detectors must be appropriate for the square footage of the home;

- e. There must be a fire evacuation plan;
- f. The prospective MAF Parent must provide contact information for at least two (2) locations (including one (1) out of town location) where the household go in the event that a community evacuation is necessary;
- g. The prospective MAF Parent must sign a Weapon Safety Agreement in the case that he or she or any other individual living in the home owns or acquires a firearm or other weapon. The Weapon Safety Agreement must comply these policies and procedures;
- h. All pool areas, including hot tubs, must be adequately fenced or secured in order to prevent the access of children when not accompanied by an adult. Spas and hot tubs must be securely covered to prevent the access of children when not in use and outdoor ponds must not be within the immediate play area of children;
- i. Farm and ranch equipment must not be easily accessible to children;
- j. Homes built prior to 1980 must be certified as lead-free;
- k. The MAFHLP Specialist must check the national Drug Enforcement Administration (DEA) registry to verify that the home has not been registered as possibly being contaminated with methamphetamine or other dangerous chemicals. Homes which appear in the registry will not be licensed; and
- l. Smoking and the use of tobacco products is prohibited in areas where a foster child is or may be present and in any vehicle in which the foster child is transported. A prospective MAF parent who smokes must have a written plan designating smoking areas. The written plan must be approved by the MAFHLP Specialist.

N. HOME STUDY CHECKLIST. In order to ensure that all of the above requirements are met, the MAFHLP Specialist must complete the Home Study Checklist in the Appendix to these policies and procedures.

11-13-6. LICENSING COMMITTEE, DECISIONS, COMPLIANCE & RENEWALS.

A. MAFHLP LICENSING COMMITTEE.

- 1. All licensing decisions shall be made by the MAFHLP Licensing Committee (the "Committee"). The Committee will be composed of:
 - a. The Tribal Human Services Clinical Director; and
 - b. Two (2) other service providers employed by Tribal Human Services.
- 2. The MAFHLP Specialist shall present, for each prospective MAF Parent, his or her Application, the home study, other pertinent documentation and information, and his or her recommendation as to licensing of that MAF Parent to the Committee.

B. DENIAL.

- 1. Prospective MAF parents may be denied licensure at any point in the licensing process.
- 2. The Committee:
 - a. May deny licensure where the Committee, based on the recommendation of the MAFHLP Specialist and/or other information, reasonably believes that the prospective MAF Parent cannot adequately provide safety, permanency, and well-being for foster children or the conditions in the prospective foster home are

not conducive to the fostering of children; and

- b. Shall provide the prospective MAF Parent with written notice of the decision and the reasons for such denial within one week of making the decision.
3. The MAFHLP Specialist shall keep a copy of the MAF Parent Application, home study, denial notice and other documentation for each prospective MAF Parent denied licensure.
4. The decision to deny licensure may be appealed as provided in these policies and procedures.

C. APPROVAL.

1. Prospective MAF Parents cannot be approved prior to the completion of all requirements for licensure listed in these policies and procedures.
2. The Committee shall provide:
 - a. The prospective MAF Parent with written notice of his or her licensure within one week of making the decision. The written notice shall specifically state that he or she meets all the requirements in and that the MAFHLP Specialist performed all actions required by these policies and procedures; and
 - b. An original copy of the license.
3. The MAFHLP Specialist shall keep a copy of the MAF Parent Application, the home study, the approval notice, an original copy of the license and any associated documents.

D. LICENSE LIMITATIONS

1. A license is only valid for the home reviewed during the home study.
 - a. The license shall list the address of the home on its face.
 - b. Each MAF parent shall notify the MAFHLP prior to moving to a new address.
 - c. If the new home meets the requirements in these policies and procedures, then the MAFHLP Specialist shall issue a new license within thirty (30) days for the remainder of the licensing period.
2. Licenses are not transferable or assignable.
3. The maximum number of children allowed in a specific home shall be determined by space limitations and other considerations. The license shall state such limitation on its face.
4. No MAF Parent shall be concurrently licensed by another licensing entity without the prior written approval of the Mescalero Apache Tribal Council.

E. BIA REGISTRATION

1. In accordance with the National Child Abuse and Neglect Data System (NCANDS) requirements for the reporting and tracking of abuse and neglect in foster homes, all MAF Parents will be registered with BIA-Social Services prior to child placement.
2. The MAFHLP will notify BIA-Social Services within five (5) working days if a license is in jeopardy of being suspended, revoked, or not renewed.
3. BIA-Social Services shall notify the MAFHLP Specialist if concerns or issues arise involving an MAF Parent that may jeopardize his or her license.

F. ANNUAL COMPLIANCE CHECKS

1. The MAFHLP Specialist shall conduct a personal interview in the home with the MAF Parent within one year of the date of initial licensure and thereafter on a yearly basis to review:
 - a. Any changes in the home;
 - b. Placements made over the prior year and any problems or issues that may have arisen;
 - c. The ability of the home to meet the needs of a child placed in the home; and
 - d. The MAF Parent's continued compliance with these policies and procedures. The MAF parent will sign an acknowledgement that he or she has reviewed the policies and procedures.
 2. Also, on an annual basis, the MAFHLP Specialist shall perform a criminal records check on all adults living in the home.
 3. The MAF Parent must provide copies of the following annually:
 - a. The MAF Parent's current driver's license, auto/homeowner's insurance, and pet vaccinations;
 - b. Updated medical reports for the MAF Parent, each child, and each adult member of the household; and
 - c. An updated well water check (if well water is being used).
- G. RE-LICENSURE. Each MAF Parent must meet be re-licensed every three (3) years. The MAFHLP Specialist shall complete a new home study and otherwise ensure continued compliance with these policies and procedures.
- H. CHANGES AFFECTING LICENSURE.
1. Each MAF Parent must notify the MAFHLP Specialist immediately of any of the following or any other circumstances which may impact his or her licensure:
 - a. The birth or death of household member;
 - b. The serious illness of household member;
 - c. The criminal arrest and/or conviction of any household member;
 - d. A child abuse or neglect referrals involving a household member; or
 - e. Any new person(s) living in the home.
 2. The MAFHLP Specialist will assess the change and any possible effect on the safety of and the ability of the MAF Parent to care for the child take appropriate action.

11-13-7. MAF PARENT FILES & CONFIDENTIALITY

- A. RECORDS RELATING TO INITIAL LICENSURE & RENEWALS. The MAFHLP shall maintain records in each parent file concerning initial licensure and any renewals. Such records include, but not limited to:
1. The MAF Parent Application;
 2. Criminal and other background check results;
 3. The home study;
 4. Health assessment reports; and

5. Any other documents obtained during the licensing process.
- B. RECORDS RELATING TO ONGOING MONITORING. All records relating to ongoing monitoring of the MAF home shall be included in the parent file including, but not limited to records documenting:
1. Each placement in the home, including but not limited to: the name of the child, dates of placement, the reason for a child's removal from the biological home, and the reason for any placement disruptions;
 2. Any allegations of abuse and neglect;
 3. Any allegations of violations of these policies and procedures; and
 4. Any and all correspondence between the MAFHLP and the MAF Parent.
- C. ACCESS TO PARENT FILES
1. Only the MAFHLP Specialist shall make entries into a parent file.
 2. All entries shall be factual, related to the MAF Parent's licensure, and signed and dated by the MAFHLP Specialist.
 3. Upon request, an MAF Parent shall be allowed to review his or her own file except that he or she shall not be allowed to review letters of reference or the identity of any person that may have made an abuse or neglect report.
 4. Copying of parent files shall not be permitted.
 5. The MAFHLP may provide an unofficial copy of the home study to the MAF Parent upon written request to MAFHLP.
 6. An MAF Parent may purchase an official copy of his or her home study for a reasonable fee to be determined by the MAFHLP.
- D. STORAGE & LOCATION OF ACTIVE PARENT FILES. All active parent files shall be maintained in a designated, secure location in the MAFHLP office.
- E. CLOSURE & DISPOSITION OF PARENT FILES. When an individual is no longer licensed by the MAFHLP, the parent file will be reviewed for accuracy and completion by the MAFHLP Specialist before closure. Closed parent files shall be:
1. Moved to and stored in a separate, secure location away from active parent files and inaccessible to non-MAFHLP staff. The MAFHLP shall keep a digital log of all closed files;
 2. Stored for ten (10) years; and
 3. After the required storage period has lapsed, disposed of permanently in a manner that prevents confidential information in such files from being improperly disseminated.
- F. CONFIDENTIAL INFORMATION
1. The MAFHLP and all MAF Parents shall keep confidential all private, personal, or protected health information collected by MAFHLP ("confidential information").
 2. Confidential information shall not be released without prior written authorization by the Mescalero Apache Tribal Court or an individual with the legal capacity, due to Tribal law or an order of the Tribal Court, to control access to such information.
 3. As to MAF Parents:

- a. Each MAF Parent shall sign a statement that he or she has reviewed, understands, and will comply with this confidentiality policy. The signed statement shall be kept in his or her parent file.
 - b. Any MAF Parent receiving a call or visit from an individual claiming knowledge of the child, but who is not authorized to speak to or visit the child pursuant to the child's service plan, shall:
 - i. Not disclose any information to such individual;
 - ii. Neither confirm nor deny the child's placement in the home;
 - iii. Encourage the individual to contact the biological parent/guardian for further information regarding the child; and
 - iv. Notify the MAFHLP Specialist of the call or visit.
 - c. Each MAF Parent will discuss a child in his or her care with the MAFHLP Specialist, the BIA-Social Services caseworker, and the parent/guardian or other relatives (where allowed in the child's service plan) only. Such discussions shall occur in areas providing privacy and not in any public area, corridor, or in an area where discussion can be overheard by others.
4. As to the MAFHLP:
- a. The MAFHLP shall not disclose:
 - i. MAF Parent confidential information without prior approval from the MAF Parent unless the release is in response to an order of the Tribal Court specifically ordering that such information be released; and
 - ii. Foster child confidential information without prior approval from the MAF Parent or legal guardian unless the release is in response to an order of the Tribal Court specifically ordering that such information be released.
 - b. The MAFHLP shall access confidential information only for the purpose of making a licensing determination or to monitor compliance with these policies and procedures.
 - c. Such information will not be left in open areas that are accessible to non-MAFHLP staff.
 - d. The MAFHLP may disclose assessment information and the home study to another foster or child welfare agency that is considering licensing an MAF parent upon receipt of a signed consent by the MAF Parent.
 - e. The MAFHLP shall share confidential information with the BIA-Social Services as requested by BIA-Social Services in order to comply with a child's service plan.
 - f. The MAFHLP shall discuss foster children and MAF Parents in areas providing privacy only. Such discussions will not take place in any public area, corridor, or in an area where such discussions can be overheard by others.

11-13-8. MAF PARENT DUTIES & RESPONSIBILITIES

- A. **COMPLIANCE WITH POLICIES & PROCEDURES.** Generally, each MAF Parent is responsible for those duties and responsibilities included in this Section and throughout these policies and procedures.

- B. PARENT AGREEMENT. Each MAF Parent that is approved for licensure must agree to comply with the Parent Agreement. The Parent Agreement will state that the MAF Parent agrees to comply with these policies and procedures and otherwise cooperate with the MAFHLP in order to maintain his or her license.
- C. COMMUNICATION & COOPERATION WITH THE MAFHLP & BIA. There will be frequent and ongoing communication between the MAF Parent and the MAHLP, the MAF child, and the BIA-Social Services in order to monitor progress, address concerns, and answer any questions. The MAF Parent must recognize the importance of maintaining continuity and the importance of a team driven approach in providing for each foster child's needs. The MAF Parent must:
1. Provide current telephone and/or cellular phone numbers in order to facilitate communication;
 2. Strive to return missed calls as soon as possible;
 3. Work closely with BIA-Social Services in scheduling monthly visits by BIA-Social Services, scheduling meetings that involve the foster child, and coordinating, with the assistance of BIA-Social Services, any biological parent/relative visits where such visits are a part of the child's service plan;
 4. During the in-home visit, be prepared to discuss progress, problems and strategies to resolve problems; and
 5. Otherwise communicate and cooperate with the MAFHLP and the BIA-Social Services.
- D. CHILD'S SERVICE PLAN. The MAF Parent shall:
1. Assist in the development of the service plan for each child placed in his or her home;
 2. Become knowledgeable as to the service plan;
 3. Ask for assistance from BIA-Social Services and other social service or community agencies or organizations when necessary in order to ensure compliance with the service plan; and
 4. Comply with the service plan.
- E. DAILY CARE & SUPERVISION. Each MAF Parent is responsible for providing daily care and supervision of each foster child placed in his or her home. Specifically:
1. The child will not be left in the care or unsupervised presence of friends, relatives, neighbors, or others without the approval of the MAFHLP. Approval may require that such individuals undergo a back ground check and training;
 2. The MAF Parent must be readily accessible at all times and able to be physically present, if necessary, to meet the foster child's emotional and behavioral needs. For example, the MAF Parent must be able to respond if the foster child's school requires the immediate presence of the MAF Parent. The MAF Parent must have a plan in place that will address situations requiring the MAF Parent's presence, just as the MAF Parent would with his or her own child; and
 3. The MAF Parent must develop a plan as to how he or she will respond if the child needs attention during the MAF Parent's scheduled work hours. For example, the MAF parent can make arrangements for the child to attend a supervised activity or to go to respite care after school.
- F. RESPITE CARE.
1. The MAF Parent may leave the child temporarily in the care of another MAF Parent that

- has volunteered to provide respite care.
2. MAF Parents wishing to use respite care must provide at least twenty-four (24) hours' notice to the MAFHLP.
 3. The MAFHLP:
 - a. Will keep a list of MAF Parents that are willing to provide respite care, the number of children already in the home, the number of children that could be accommodated and the hours that such parents are available;
 - b. Assist in the scheduling of respite care; and
 - c. Approve all use of respite care.
 4. Respite care is limited to four (4) hours within a single twenty-four (24) hour period.
 5. Respite care may:
 - a. Be used by an MAF Parent so that that parent may attend work or school or to take a temporary break from the responsibilities of parenting.
 - b. Not be used as a form of discipline; and
 - c. Not be overused (used on a daily basis except in the case that it is being used to allow the MAF Parent to work a primary job) or abused (like where a parent leaves the child in respite care longer than planned).
 6. MAF Parents providing respite care will not receive compensation for such service from the MAFHLP. Such parents may be eligible for compensation by BIA-Social Services.

G. REGULAR HEALTH CARE NEEDS.

1. Each MAF Parent, in coordination with BIA-Social Services, shall ensure that the health needs of each foster child are met with the best resources available.
2. The MAF Parent is not responsible for applying for or maintaining the child's Medicaid coverage. Instead, the BIA-Social Services caseworker has that responsibility.
3. The MAF Parent must schedule all medical/dental/vision appointments and communicate such dates to BIA-Social Services.
4. As to medical appointments:
 - a. Unless the child has had a physical exam within the last twelve (12) months, the MAF Parent, within two (2) weeks of placement, must schedule an initial physical exam. The exam must be conducted within thirty (30) days of placement; and
 - b. Each MAF Parent must ensure that each child has an annual physical exam.
5. As to dental appointments:
 - a. Unless the child has had a dental exam within the last six (6) months, the MAF parent, within thirty (30) days of placement, must schedule an initial dental exam. The exam must be conducted within ninety (90) days of placement; and
 - b. The MAF Parent must ensure that the child has an annual dental exam.
6. As to vision appointments:
 - a. Unless the child has had a vision exam within the past year and a copy of the exam has been obtained and placed in the child's record, the MAF Parent, within

ninety (90) days of placement, is responsible for scheduling an initial vision exam. The exam must be conducted within one hundred and twenty (120) days of placement; and

- b. The MAF Parent must ensure that the child has an annual vision exam.
7. All documentation related to any medical, dental or vision appointment will be submitted to BIA-Social Services by the MAF Parent as soon as possible after the appointment. The appointment will be discussed at the next home visit.
8. The MAF Parent will ensure that each child receives other evaluations and follow-up treatments as ordered by a medical provider.
9. The MAF Parent is responsible for identifying and securing all necessary health and medical providers for the child.
10. The MAF Parent is responsible for educating each child on basic health information. However, the MAF Parent will consult with BIA-Social Services as to whether it is appropriate to discuss pregnancy prevention, sexually transmitted diseases (STDs), cancer prevention (especially for girls over the age of 15 years), and HIV with the child.
11. In the case of a medical emergency, the MAF Parent will act as required by these policies and procedures.

H. MEDICATIONS.

1. The MAF Parent must ensure that any prescription medication for the child is only administered as prescribed.
2. Upon placement, if a child is on any medication, BIA-Social Services will:
 - a. Give the medication to the MAF Parent and make sure all medication labels are current, correct, and not expired; and
 - b. Discuss the purpose, dose, and frequency the medication, the most common side effects of the medication, and the potential drug-food interactions of the medication.
3. The MAF Parent shall ensure that all prescription medications are counted, monitored, and documented on a Medication Administration Record (MAR) form provided by BIA-Social Services.
4. In particular, the MAF Parent will list any missed doses, side-effects and other issues.
5. The MAR will be submitted for review to BIA-Social Services on a monthly basis.
6. The MAF Parent will inform the prescribing doctor of any side-effects or reactions to the medication as soon as possible.
7. All prescription and over-the-counter medications will be clearly labeled and stored in a locked medication cabinet away from the child and others at all times.
8. Where it is appropriate, given the child's age and ability to understand, the MAF Parent will inform the child of the medication's:
 - a. Purpose, dose, and frequency;
 - b. Most common side effects; and
 - c. Potential drug-food interactions.
9. Where appropriate or ordered by a child's case plan or the prescribing doctor, the child

may administer the medication by him- or her-self. However, the MAF Parent must monitor the child's self-administration. When medications are self-administered, the MAF Parent may hold the container for the child and/or assist with opening the container, but may not place the medication in the child's hand or mouth.

10. After consultation with BIA-Social Services and the prescribing doctor, in order to decrease the chances of a child "cheeking" his or her medication, the MAF Parent may request the child to open his or her mouth to ensure that the child actually took the medication.
11. The MAF Parent will inform BIA-Social Services soon as possible of any newly prescribed medication.
12. Any unused or expired prescription medications will be given to BIA-Social Services for disposal.

I. SMOKING & TOBACCO PRODUCTS.

1. Each MAF Parent will prohibit the use of tobacco products by any child placed in his or her home. The MAF Parent will notify BIA-Social Services in the case that he or she observes or suspects that a foster child is smoking
2. Each MAF Parent is responsible for providing homes that are smoke-free and free from the dangers of second hand smoke. Therefore, MAF Parents must refrain and prevent others from smoking while in the presence of the foster child. It is recommended that each MAF Parent and others not smoke within fifty (50) feet of any child placed in his or her home.
3. The MAF Parent may smoke or allow smoking by the child or others in the presence of the child where smoking is related to a traditional activity and the child is not being forced to participate in such activity. The MAF Parent must notify the MAFHLP and the BIA-Social Services of the possibility of such smoking upon application for licensure and before placement of each particular child.

J. DRUGS & ALCOHOL. Generally, each MAF parent shall provide and promote a drug and alcohol free environment.

1. The use of illicit drugs and/or the misuse of prescription drugs by an MAF Parent is strictly prohibited. Furthermore, the MAFHLP prohibits the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in any foster home.
2. Alcohol may be consumed by an MAF Parent in moderation.
3. Full or empty, unopened or open containers must be stored in a secure location that is inaccessible to children.
4. If there is reasonable suspicion to believe that an MAF Parent may be abusing drugs or alcohol, then the MAF Parent may be asked to submit to a drug/alcohol test. If there is sufficient evidence of abuse of drugs or alcohol, like a positive drug test or an arrest for public intoxication, then the MAF Parent's license will be suspended or revoked immediately. Any child placed in the home will be removed immediately.
5. The MAF Parent must ensure that a child under the age of twenty-one (21) years of age is not allowed to consume alcohol and that children of any age are prevented from abusing drugs.
6. Each MAF parent should monitor children in their care to prevent against and seek treatment for an MAF child that abuses drugs or alcohol.

7. An MAF Parent should be observant of:
 - a. Unusual behavior that might indicate that a child in his or her care may have used or is using drugs, including: rapid affect and behavior changes (e.g. laughing and crying inappropriately); decline in academic performance; lack of energy or motivation; lots of anonymous phone calls to the child; unwillingness to discuss friends; missing money; drugs found in the house or car; removal from athletics; locked drawers; stumbling, mumbling, and bloodshot eyes; avoidance of adults; changes in eating and/or sleeping habits; and weight loss; and
 - b. Certain items that may be drug paraphernalia or contraband such as: marijuana or hash pipes; rolling papers; empty capsules; pills of any sort; hot rocks (stone or porcelain holder for a joint); roach clips (alligator clips or hemostats)white powder; single edged razor blades and small mirrors; lots of butane lighters or fluid in any form; empty glue tubes; plastic bags; tiny brownish bottles; and Murine or other red-eye treatments.
8. The MAF Parent may search a child's room for signs of alcohol use or drug paraphernalia or contraband. Any paraphernalia or contraband that is found should be confiscated immediately.
9. Where an MAF Parent finds that a child is presently under the influence of drug or alcohol, the MAF Parent should:
 - a. Confiscate any contraband or paraphernalia and otherwise secure the child's surroundings unless such action would result in danger or injury to the child or the MAF Parent;
 - b. Try to stay calm and use a normal voice;
 - c. If the child's friends are present, then such friends should be asked to leave immediately;
 - d. Wait until the child is no longer under the influence to discuss the abuse of drugs and alcohol and any discipline or behavior intervention;
 - e. Assess whether the child is in need of medical care and ensure that such care is provided;
 - f. Be prepared to engage in numerous and possibly lengthy discussions as to the consequences of the abuse of drugs and alcohol with the child;
 - g. Be prepared to assist BIA-Social Services in obtaining necessary counseling or rehabilitation treatment for the child;
 - h. Assess whether the MAF Parent feels confident that he or she can implement immediate discipline or behavior intervention and act accordingly;
 - i. Assess whether law enforcement should be called; and
 - j. Inform BIA-Social Services within twenty-four (24) hours of the incident.
10. Furthermore, where the MAF Parent observes unusual behavior or behavior indicative of current drug or alcohol use, then:
 - a. The MAF Parent should discuss the behavior with BIA-Social Services as soon as possible;
 - b. The MAF Parent may decide on immediate discipline or behavior intervention. However, he or she is required to seek BIA-Social Services input as soon as

possible;

- c. BIA-Social Services, if appropriate, can assume the role of negative authority in order to maintain positive relationships between the MAF Parent and the child; and
 - d. BIA-Social Services will set up a meeting with the MAF Parent to decide long term consequences which could include, but are not limited to: law enforcement involvement and/or additional assessment of the child's counseling or rehabilitation treatment needs.
11. The MAF Parent may ask that a child found to be abusing alcohol or drugs be removed from his or her home and placed elsewhere.

K. TRANSPORTATION.

- 1. Each MAF Parent must provide all transportation needs for each foster child placed, just as parents would for their own children.
- 2. The MAF Parent is responsible for coordinating transportation to all appropriate medical/dental appointments, therapy sessions, family visits, extra-curricular school and other recreational activities, cultural events, and religious activities.
- 3. Transportation can be in the MAF Parent's vehicle, a school bus or other vehicle used by the child's school, or through public transportation if appropriate for the child.
- 4. Each MAF Parent who transports a child in his or her personal vehicles shall:
 - a. Use age-appropriate, legally required passenger/child restraint systems;
 - b. Provide adequate passenger supervision;
 - c. Properly inspect and maintain the vehicle;
 - d. Maintain a current driver's license, insurance, and registration;
 - e. Avoid medications or drugs that may impair operation of a motor vehicle;
 - f. Avoid alcohol consumption; and
 - g. Obey all traffic laws.
- 5. In the case of a medical emergency, the MAF Parent will act as provided in these policies and procedures.
- 6. The MAF Parent must request permission in order to temporarily travel out-of-state with a foster child; such travel will not be undertaken without the prior written approval of BIA-Social Services.
- 7. A foster child may obtain a driver's permit and/or license if BIA-Social Services and the MAF Parent are in agreement and the Tribal Court does not explicitly prohibit the child from obtaining a permit or license. Prior to obtaining a driver's permit or license, the child must be added to the MAF Parent's insurance policy.

L. EDUCATION.

- 1. Each MAF Parent shall be responsible for ensuring that each child placed in his or her home is enrolled in and attends the educational or vocational programs provided in the child's educational plan. The child's service plan will include his or her educational plan.
- 2. Where a child has not been enrolled, the MAF Parent will contact the appropriate school district/vocational program to enroll the child within three (3) days of the child's

placement.

3. The MAF Parent, in coordination with BIA-Social Services, will ensure that any child in need of special education services receives such services and will schedule and attend any Individual Education Plan meetings (IEPs) and reviews.
4. The MAF Parent must:
 - a. Communicate with school personnel on a regular basis to confirm the child's attendance and report any issues to BIA-Social Services;
 - b. Ensure that the child's educational progress, or lack thereof, is communicated to BIA-Social Services and obtain and submit all educational reports (grades and other progress and needs assessments) to BIA-Social Services; and
 - c. Coordinate with BIA-Social Services to in regard to referrals for educational assessments (e.g. special education, vocational services, speech therapy, etc.).

M. COMMUNICATION BY THE CHILD

1. The MAF Parent shall protect a child's right to have unimpeded, private and uncensored telephone, mail or email communication with individuals of his or her choice unless prohibited by the child's service plan.
2. Restrictions on communication in the child's service plan must be followed.
3. The possession and use of a cell phone primarily by the child must be approved by BIA-Social Services prior to the child receiving the cell phone.
4. If a child is approved, the MAF parent, foster child and BIA-Social Services will develop a set of rules and guidelines for cell phone use. For example: the cell phone may only be used after school until bed time then turned into the MAF Parent or a child can lose the use of the cell phone for a week if the child has not followed rules of the house or completed weekly chores. These rules and guidelines will be discussed with the child prior to getting the cell phone.
5. The MAF Parent may remove the cell phone in the event the child is misusing the cell phone.
6. The cost of the cell phone and charges for the cell phone are the responsibility of the child and the biological parents. Where the phone is removed from the child, then the MAF Parent will give the phone to BIA-Social Services until it is determined that the phone can be returned.
7. Communication may be reasonably restricted to a degree greater than that provided in the child's service plan by BIA-Social Services in order to protect the child or others from harm, harassment, or intimidation and pending a formal change in the service plan. However, notice of the restriction must be given to the child.
8. The MAF Parent should inform BIA Social Services immediately if he or she suspects that an individual that is not allowed to communicate with the child pursuant to the child's service plan is doing so (by sending letters in the same envelope as letters by another or getting on the phone after having an individual allowed to communicate call the child).

N. FINANCIAL PROPERTY OF THE CHILD

1. Financial gifts to, allowances for, and wages earned by a foster child shall be considered the property of the child. The child has the ultimate authority as to how to dispose of his

or her property.

2. However, the MAF Parent may make suggestions to and counsel the child as to sound financial management. In addition, the MAF Parent may withhold a child's allowance as a form of discipline provided that the MAF Parent does so in a manner that is consistent with these policies and procedures.
3. This does not include foster care assistance payments made by BIA-Social Services to the MAF Parent for the care of the child.
4. In the case of a young child or a child that is not capable of appropriately handling financial property, the MAF Parent may keep the financial property in his or her possession. The MAF Parent will account for the money and notify the BIA-Social Services of his or her possession. The MAF Parent will ensure that all financial property of the child is maintained separately from other financial property.
5. All financial property of the child in the possession of an MAF Parent, at the time a child's placement terminates, must be returned to the child or BIA-Social Services, as appropriate within five (5) days of the child's change in placement.

O. CULTURALLY APPROPRIATE SERVICES & ACTIVITIES. Each MAF Parent must:

1. Maximize the likelihood that all services are provided culturally appropriate; the MAF Parent may request information as to culturally appropriate services from the MAFHLP and the BIA-Social Services.
2. Ensure that the child participates in cultural activities to the greatest degree possible and as provided in the child's service plan.

P. WEAPONS

1. Each MAF Parents will sign a Weapons Agreement. The Weapons Agreement will include a list of all weapons in the possession of the MAF Parent or in the home and where the weapon is stored. The Agreement will be updated with the purchase or acquisition of additional weapons.
2. The Agreement shall provide, at a minimum that:
 - a. Each and every weapon must have a trigger lock (safety) and be kept locked in storage (a gun rack, cabinet, or closet);
 - b. Ammunition must be stored and locked separately from any firearms;
 - c. The keys to the storage unit should not be accessible; and
 - d. No foster children are to be in the presence of any firearms without prior written approval of the MAFHLP.
3. Weapons include, but are not limited to:
 - a. Guns, such as rifles, carbines, shotguns, pellet guns, BB guns, starter pistols and other firearms;
 - b. Explosive devices, such as gunpowder, ammunition, primer caps, detonators, fuse cords; and
 - c. Sports/hunting equipment, such as fishing spears, scuba swords, large knives, large animal traps, swords, bows and steel-tipped arrows.
4. In the event approval to participate in hunting is given by MAFHLP, the MAF Parent will be responsible for the MAF child hunter safety training and provide the MAFHLP with a

copy of the child's Hunter Safety Card.

Q. TERMINATION OF PLACEMENT

1. On the date a child is removed from a home, BIA-Social Services will notify MAFHLP and a Placement Termination Form will be completed and signed by the MAFHLP Specialist. The completed form will be maintained in the Parent file.
2. The MAF Parent must return all of the child's belongings to and otherwise cooperate with BIA-Social Services.

11-13-9. CHILD DISCIPLINE

- A. **GENERAL.** Discipline should be a process through which a child develops the self-control, self-reliance and orderly conduct necessary to assume responsibilities, make daily living decisions and live according to accepted social behavior. The goals of discipline are to problem-solve appropriate ways of getting needs met (i.e. needs for attention, ways to express feeling, etc.); to feel good about relationships with other adults and other children; and to have a positive self-concept. MAF Parents are encouraged to role model and promote positive behaviors through praise, structure, and consistency.
- B. **REASONABLENESS OF DISCIPLINE.** Discipline must be determined on a case-by-case basis and related to the undesirable behavior. All discipline must be reasonable given the child's understanding and needs and the severity of the behavior and limited to the least restrictive method.
- C. **TRAINING.** Each MAF Parents will receive training in these child discipline policies and procedures prior to licensure.
- D. **PROHIBITED DISCIPLINE.** The use of the following types of discipline is prohibited:
 1. Manual or mechanical restraint; lengthy periods of isolation or seclusion (including requiring a child to remain silent); the use of a physical barrier to prohibit a child's leaving (locks may be used only as a means of external security to keep persons out or deny access to certain areas of the home); and chemical restraint or medication in non-crisis or non-emergency situations;
 2. Punishment for bed wetting or toilet training;
 3. Discipline by any person other than the MAF Parent;
 4. Verbal threats, humiliation, belittling, harassment or other mental/emotional abuse;
 5. Excessive, inappropriate, strenuous or harsh exercise or physical labor;
 6. Corporal punishment;
 7. Group punishment for one individual's behavior; and
 8. Deprivation of:
 - a. Visits and/or communication with relatives and others allowed by the child's service plan;
 - b. The opportunity to attend religious services, cultural events or counseling;
 - c. Educational services; and
 - d. A child's basic needs (like food, water, clothing, shelter, sleep, items needed for personal hygiene, access to a toilet, health care, etc.).
 9. No type of discipline should be utilized with infants.

E. ACCEPTABLE CHILD DISCIPLINE.

1. MAF Parents may use forms of child discipline that promote or include:
 - a. Structure within the home and consistent behavioral responses;
 - b. Setting boundaries and limits and establishing mutual respect and honesty;
 - c. Verbal intervention like explaining natural consequences or choices;
 - d. Removal of other children or things that may be dangerous to the child;
 - e. Writing exercises which are appropriate for the child's age and developmental level;
 - f. Verbal praise and rewards; and
 - g. Planned ignoring and redirection.
2. Specific examples of acceptable child discipline include:
 - a. Assigning special or additional tasks/chores for periods not to exceed one month; and;
 - b. Temporary removal of privileges (electronic entertainment equipment, special activities outside of the home, visits with friends, etc.) for periods not to exceed one month.

F. ALLOWANCES

1. Withholding a child's allowance may be a form of discipline only after the child has been given an oral warning that his/her allowance will be withheld.
2. When the client's allowance has been withheld, the MAF Parent will explain to the child how the money can be earned back and provide the child with opportunities to earn the money back.
3. A child's allowance may not be withheld for more than one month.
4. If a child fails to earn back the allowance, then the withheld amount must be returned to BIA-Social Services within five (5) days of the end of a placement.

G. TIME-OUT

1. A child may be asked to take a time-out. A time-out is where the child is removed from family members, peers, or other groups for a short period of time.
2. Time-out should only last for the length of time necessary for the child to resume self-control and/or to prevent harm to the child or others.
3. Time-out is not to be used as a punishment or form of discipline or for the convenience of the MAF parent. Again, the purpose of time-out is to give the child the opportunity to regain self-control and consider the consequences of behavior.
4. In most instances, the MAF Parent will instruct the child to take a time-out; however, the child may also request that he or she take a time-out.
5. Time-out should be monitored closely and frequently to ensure the child's safety.

H. LAW ENFORCEMENT ASSISTANCE

1. If a child ever requires physical intervention due to dangerously aggressive behavior, the

MAF Parent should keep him- or her-self and others safe and contact law enforcement immediately.

3. After contacting law enforcement, the MAF Parent must notify BIA-Social Services. If after working hours, the MAF Parent will call the automated phone line to leave a message for the BIA-Social Services caseworker stating that an incident occurred and will attempt to follow-up with the BIA-Social Services caseworker the following morning.
4. The MAF Parent must report the incident in writing within twenty-four (24) hours to BIA-Social Services. A copy of the report will be shared with MAFHLP within five (5) days of the incident.

11-13-10. ILLNESSES, INJURIES, ABUSE REPORTING, & EMERGENCY SITUATIONS

A. ILLNESSES & INJURIES

1. Each MAF Parent is responsible for obtaining appropriate medical treatment for all illnesses of or injuries to a child.
2. After treatment of a minor illness or injury (such as the common cold or a bruise or scrape from outdoor play), the MAF Parent must document the illness or injury by noting the date and time and what happened. The BIA-Social Services will review the same at the next home visit. In the case of illness, specifically, the MAF Parent will document high temperatures and symptoms of the child.
3. If a child suffers an illness requiring medical care by a licensed physician or is injured seriously enough to require emergency medical treatment, the BIA-Social Services will be notified immediately. Some examples serious illnesses or injuries include broken bones, concussions, severe sprains, partially severed fingers, pneumonia, seizures, and severe flu.
4. The MAF Parent will ensure that appropriate medical assessments and care are provided given the type and seriousness of the illness or injury. The MAF Parent will obtain a copy of the attending physician's treatment and orders for the child. A copy of the same must be provided to BIA-Social Services.
5. The failure of an MAF Parent to report a serious illness or injury to BIA Social Services may result in corrective action, including suspension or revocation of his or her license.

B. MANDATORY ABUSE REPORTING

1. Each MAF Parent must ensure that any and all allegations or suspicions of abuse and/or neglect are reported as required by Section 11-9-2 of the Mescalero Apache Tribal Code and these policies and procedures. That Section requires MAF Parents to:
 - a. Provide immediate verbal notification to BIA-Social Services and/or law enforcement; and
 - b. Confirm his or her verbal report in writing within twenty-four (24) hours of becoming aware of the allegation and/or suspicion of abuse and/or neglect on an incident report. This report will be sufficient to meet the requirement in the Tribal Code at Section 11-9-2 (C) that a written report be provided.
2. Any MAF Parent that willfully fails to report allegations or suspicions of abuse and/or neglect will be subject to the civil penalties listed at Section 11-9-4 of the Tribal Code, MAFHLP license suspension or revocation, and/or the removal of all MAF children until a complete investigation has occurred.

3. Each MAF Parent will receive training regarding the reporting requirements for abuse and neglect prior to licensure.

C. DISASTERS

1. Disasters include, but are not limited to, acts of nature (flood, hurricane, fire, and tornadoes), chemical or hazardous material spills, critical equipment failure, weapons of mass destruction events, and acts of terrorism. MAF Parents must secure protection and safety for foster children during any emergency or disaster. It is the responsibility of each MAF Parent to monitor news and weather information to remain informed about possible threats and to be pro-active in securing appropriate protection.
2. Prior to licensure, the MAF Parent will be required to develop a disaster and emergency plan (DEP). The DEP will include communication and contact procedures during the emergency and tracking of children and otherwise comply with the requirements listed herein.
3. The family disaster and emergency plan (DEP) must be approved and signed by the MAFHLP Specialist. Any deficiencies in the plan must be addressed prior to licensure. The MAFHLP Specialist may assist an MAF Parent in developing a DEP. A copy of the approved DEP must be maintained in the family file.
4. Generally, the DEP must include:
 - a. Arrangements for the adequate provision of food, shelter, transportation, medication, supplies, and emergency equipment;
 - b. A designated meeting location in case family members are separated and cannot get home and a plan for communicating that meeting place to all family members; and
 - c. Communication information such as telephone/cellular phone numbers and e-mail addresses of family/household members, the MAFHLP, and the BIA-Social Services to report whereabouts and condition of the family and children.
5. During peak seasons for natural disasters (such as wildfires, hurricanes or tornados), the DEP must require the maintenance of: a supply of non-perishable foods and water for a minimum of three (3) days and a disaster preparedness kit.
6. The DEP should include a location where the family will go in the event that evacuation or other shelter is necessary. This may include the home of family members or other accommodations such as camping facilities or a motel/hotel well away from the danger area.
7. During a threat of disaster or emergency, a full tank of fuel must be maintained in a vehicle.
8. The DEP should require that medications be locked throughout the emergency. There must be an adequate supply of medication or access for getting medication refilled as necessary.
9. Each MAF Parent will review the DEP with the child upon placement.
10. MAF Parents will receive annual training regarding MAFHLP policy and procedure for disasters and emergencies.
11. The DEP will require that the MAF parent will post a home evacuation plan on the inside

of the child's bedroom door. The plan will also be posted in common areas.

12. The MAF Parent will have periodic fire drills, so that all individuals understand the evacuation plan and where to meet once outside the home.
13. A voluntary evacuation order must be responded to as if it were a mandated evacuation order. MAF Parents must comply with mandated evacuation orders. Upon an evacuation, the MAFC parent must:
 - a. Immediately report any changes to the evacuation destination or DEP to BIA-Social Services;
 - b. Contact BIA-Social Services upon arrival at their destination;
 - c. Report any serious incidents or secure intervention/treatment alternatives for a child as needed;
 - d. Communicate plans to return home to the BIA-Social Services; and
 - e. Contact BIA-Social Services upon returning home.

D. SUICIDALITY

1. MAFHLP training will include information on the topic of suicide and the risk of suicide in addition to behavioral indications, prevention and appropriate responses.
2. Where an MAF child has attempted in any way to harm him- or herself and medical attention is needed, the MAF Parent will immediately:
 - a. Utilize passive physical restraint procedures taught, if appropriate;
 - b. Call 911 if the child requires immediate medical attention;
 - c. Take the child to the nearest emergency room; and
 - d. Contact the BIA-Social Services caseworker within twenty-four (24) hours, to report:
 - i. How the child attempted or caused any self-injury;
 - ii. What the MAFC parent did to provide intervention and/or medical care;
 - iii. What the recommendations of the medical personnel were for follow-up;
 - iv. If the child is still at risk for harming him- or herself; and
 - v. What the child said about the reason for trying to harm him- or her-self.
 - e. An incident report form will be completed by the MAF Parent and forwarded to the BIA-Social Services within three (3) days.
3. Where an MAF child makes a suicidal gesture (like saying that he or she wished he were dead in a serious tone or acting out in a dangerous and reckless manner) which does not require immediate medical attention, then:
 - a. The MAF Parent will contact the BIA Social Services immediately to report:
 - i. About the gesture;
 - ii. What the child said about the reason for the gesture;
 - iii. Whether the child says he or she still wants to harm him- or herself; and
 - iv. The MAF Parent's assessment of child's status and need for

precautionary measures;

- b. If BIA-Social Services and the MAF Parent, after discussion of a suicidal gesture, determine that there is in fact a need for medical attention due to the immediate, significant risk that the child may try to seriously harm him- or herself, the MAF Parent shall call 911 or immediately transport the child to the nearest hospital for evaluation.
 - c. The MAF Parent will then contact BIA-Social Services to share information as to recommendations made by the child's medical provider.
 - d. An incident report form will be completed by the MAF parent and forwarded to the BIA-Social Services within three (3) days.
4. Where a child is released from medical care but there remains a concern that the child might harm him- or herself, the MAF Parent will initiate a suicide watch by:
- a. Keeping the child under constant supervision, including regular checks while the child is sleeping;
 - b. Not allowing the child access to a weapon of any kind including guns, knives, rope, sharp items, etc.;
 - c. Not allowing the child access to any potentially poisonous materials, like medications, kitchen/home cleaning products, etc.;
 - d. Performing a thorough search of the child's room and the rest of the house to look for potentially dangerous items with which the child might harm him- or herself;
 - e. Remaining in contact (at least every four (4) hours) with BIA-Social Services to reassess the risk of the child of harming him- or herself.
 - f. If the MAF Parent and BIA-Social Services determine that the child is not at immediate risk for harming him- or herself, the suicide watch will be discontinued.
 - g. BIA-Social Services may ask the child may be asked to sign a written contract agreeing not to harm him- or herself.
 - h. An incident report form will be completed by the MAFC parent and forwarded to the BIA-Social Services caseworker.
5. If a child threatens to kill another person, the BIA-Social Services caseworker or MAFC parent will notify law enforcement immediately.
6. If a child threatens to hurt him- or her-self or another person, then the child may be removed for treatment or to another more restrictive/appropriate foster home. Return of the child to the MAF Parent after treatment or removal must be agreed upon by BIA-Social Services, the MAF Parent and the MAFHLP. Even where removal is not deemed necessary by a qualified medical provider and/or BIA-Social Services, the MAF Parent may request that the child be removed from placement in his or her home.

E. MISSING CHILDREN, ABDUCTIONS, & RUNAWAYS

1. Within one (1) hour of determining that a child is missing, might have been abducted, or has run away, the MAF Parent will contact law enforcement and BIA-Social Services to relay the following information:
 - a. When it was noticed that the child was missing/ran away;

- b. Where the child last seen;
 - c. What the child was wearing;
 - d. Who last saw the child;
 - e. Whether the child said anything about running away or where he/she might run to;
 - f. Are there any special concerns for the child (i.e. medications, health problems, etc.); and
 - g. Is there any other information that might be helpful in identifying or locating the child.
- 2. The MAF Parent will ensure that law enforcement understands that the child is in foster care. In addition, the MAF Parent will request a copy of the police report.
 - 3. If the child returns, then BIA-Social Services and law enforcement will be notified. At the discretion of BIA-Social Services, the child may be subject to a drug test, a pregnancy test, a rape kit, and/or a visit to the child's juvenile probation officer.
- F. **CONTACT WITH LAW ENFORCEMENT.** Generally, MAF parents shall contact law enforcement as specifically required in this Section and elsewhere in these policies and procedures and in any other situation when it is appropriate to do so.
- 1. Law enforcement must always be called:
 - a. In situations where there is an immediate danger of serious bodily injury or death of an individual ("serious" meaning grave in quality, character, or manner);
 - b. In cases where there is evidence or credible allegations of sexual misconduct or abuse involving a child;
 - c. When there is the theft of a vehicle;
 - d. When an MAF Parent confiscates drug or alcohol contraband or paraphernalia from a child; and/or
 - e. In situations where firearms, firearm ammunition, or explosives are discovered or involved.
 - 2. In other circumstances, the MAF Parent will consult with the BIA-Social Services to determine whether contacting law enforcement is warranted. The following examples illustrate situations where the MAF Parent should consult with BIA-Social Services:
 - a. To request immediate help in a dangerous situation to maintain safety for all MAFC household members;
 - b. Where the child exhibits physical aggression toward others that is not provoked and results in injury;
 - c. Where there is a documented individualized pattern of aggression on the part of the child that is not responsive to conventional behavior management techniques;
 - d. Where the child uses offensive or defensive combat instruments, other than firearms, in the context of an aggressive act that results in an injury requiring medical attention; and/or
 - e. For fire setting by the child.
 - 3. Law enforcement intervention will not be contacted:

- a. As a form of discipline; or
 - b. For a non-emergency situation.
4. Any child who engages in criminal activity may be subject to criminal charges. MAF Parents will cooperate with law enforcement to the greatest extent possible.
 5. Whenever it is necessary to seek law enforcement intervention regarding an MAFC child or where an MAF child is charged with a criminal offense, an incident report must be completed by the MAF Parent and submitted to BIA-Social Services within twenty-four (24) hours.

11-13-11. MAF PARENT RIGHTS & DISCLOSURE OF INFORMATION

- A. **REVIEW & ACKNOWLEDGEMENT.** During orientation, the MAFHLP will ensure that the prospective MAF Parent’s rights are explained in detail, with language that the prospective MAF Parent understands. The prospective MAF Parent and the MAFHLP Specialist will each acknowledge specifically and in writing that this Section was reviewed and that the MAF Parent understands his or her rights.
- B. **MAF PARENT RIGHTS.** Each MAF Parent shall have the right to:
 1. As a primary provider of services, be informed of and participate in the child’s service plan;
 2. Be treated with respect and dignity;
 3. File a grievance and/or appeal an adverse licensing decision as described in these policies and procedures;
 4. Express preferences about the characteristics of the child to be fostered;
 5. Turn down a potential “match,” subject to the limitation listed herein; and
 6. Have his or her confidential information be protected as provided in these policies and procedures.
- C. **DISCLOSURE OF CERTAIN INFORMATION.** In addition to those rights listed above, the MAF Parent has the right to be notified of the following information in regard to each child that might be or is placed:
 1. The current service plan, if any;
 2. All medical issues including current diseases, illnesses, handicaps, or other medical conditions like: asthma, communicable diseases, known allergies, or Fetal Alcohol Syndrome;
 3. All medication or medical treatment being provided at the time of placement;
 4. All behavioral concerns including the child’s history of hurting other children, hurting animals, destroying property, fire setting, running away, sexually acting out, or sexual molestation of other children;
 5. Mental status, including:

- a. History of and current psychological counseling;
 - b. Reason, frequency, duration, and location of counseling;
 - c. Participation requirements; and
 - d. Projected length of treatment;
6. Educational information including: current grade level, enrollment in special education or behavior disorder classes, and history of truancy; and
7. Biological family history that could be pertinent to the placement.

D. FOSTER CARE ASSISTANCE PAYMENTS. All reimbursements for expenses or foster care financial assistance are made by BIA-Social Services to the MAF parents in accordance with federal statute and regulations. The MAFHLP is not responsible for such reimbursements or financial assistance.

11-13-12. VIOLATIONS, ADVERSE DECISIONS & CORRECTIVE ACTION

A. INVESTIGATION

1. The MAFHLP Specialist in coordination with BIA-Social Services shall investigate all possible violations of these policies and procedures.
2. However, the MAFHLP Specialist shall notify BIA-Social Services and law enforcement of any reports of abuse and neglect. In such cases:
 - a. The MAFHLP Specialist will cooperate with law enforcement to the greatest degree possible and not conduct an investigation separately in the case of abuse and neglect allegations;
 - b. No new placements will be made; and
 - c. Existing placements home will be evaluated for risk of danger to the child. A child may be placed with a different MAF Parent temporarily until an allegation of abuse and neglect is investigated.
3. If a violation is considered to be of a more critical nature, then BIA-Social Services shall be contacted immediately and the child shall be removed from the home and placed with a temporary foster home until further investigation.
4. Depending on the outcome of the investigation by MAFHLP or law enforcement (in the case of abuse and neglect allegations), the MAFHLP in coordination with BIA-Social Services shall determine whether and the type adverse action is necessary.
5. The MAFHLP Specialist may, without the approval of the Committee, suspend or revoke a license and/or implement corrective actions. In such case, the MAFHLP must notify the Committee of such adverse actions. Decisions to not re-license shall be made by the Committee only.
6. Any adverse action taken may be appealed as provided in these policies and procedures.

B. SUSPENSION & REVOCATION

1. A license may be suspended or revoked at any time for reasons which may include but are not limited to:
 - a. Disqualifying criminal records check results;
 - b. Disqualifying abuse and neglect check results;

- c. The failure of the MAF Parent to comply with BIA-Social Services or these MAFHLP policies;
 - d. The failure of the MAF Parent to seek support services provided by BIA Social Services in order to preserve the placement;
 - e. The refusal of the MAF Parent to comply with the child's case plan, including the failure of the MAF Parent to actively preserve connections between the foster child and his or her birth family and community of origin, where such preservation is required by a child's case plan;
 - f. The inability of the MAF Parent to adequately meet the needs the child;
 - g. The MAF Parent's failure to include the child in family activities;
 - h. Overuse or inappropriate use of respite care by the MAF Parent;
 - i. The failure to demonstrate the ability to provide emotional support during important developmental points in the course of a child's life;
 - j. Repeated refusals by the MAF Parent to accept children who have been matched for placements;
 - k. The failure of the MAF Parent to participate in required training;
 - l. The MAF Parent's abuse of alcohol, illegal drugs and/or prescription drugs substances;
 - m. The MAF Parent's exposure of the child to cigarette smoking and tobacco products; and
 - n. Other circumstances that in the professional judgment of the MAFHLP Specialist would be contrary to the safety, permanency, and well-being of the child.
2. A written notice of suspension or revocation of a license will clearly identify the reasons for the action. The notice shall also list any corrective actions that are required.
 3. Suspension of a license may be voluntary or involuntary.
 4. Voluntary reasons for suspension may include, but are not limited to:
 - a. Medical conditions of the MAF Parent or another member of the household;
 - b. Adoption of another child; or
 - c. Other major life changes within the household.
 5. Involuntary reasons for suspension may include any of the reasons listed above and may require that the MAF Parent participate in additional training or otherwise take appropriate action before the suspension is lifted.
 6. Neither voluntary nor involuntary suspensions shall last more than six (6) months.

C. CORRECTIVE ACTION PLAN (CAP)

1. A corrective action plan (CAP) may be developed and implemented in the case of a decision to revoke or suspend a license.
2. A CAP may be required even where no adverse licensing decision has been made, but the Committee has reason to believe that there has been a violation of these policies and procedures.
3. The MAF parent shall be involved in the development of the CAP.

4. The CAP shall include, at a minimum, weekly check-ins.
5. In addition, the CAP shall include target dates by which certain actions must be completed.
6. The CAP shall be signed by the MAF parent and the MAFHLP Specialist. A copy shall be placed in the parent file and a copy shall be provided to the MAF parent.
7. The MAFHLP Specialist in coordination with the BIA-Social Services shall be responsible for following up with the MAF parent to determine if the reason for the CAP has been completely addressed or if further action is necessary.

11-13-13. GRIEVANCES & APPEALS

A. GENERAL.

1. The MAFHLP Specialist and the Committee shall ensure that the below mechanism for filing grievances and appealing adverse licensing decisions is meaningful for each MAF Parent while providing first for the safety of foster children.
2. No MAF Parent will be retaliated against or denied a license for the sole reason that he or she exercised his or her right to file a grievance or appeal.

B. STEP 1: MAFHLP SPECIALIST

1. The MAF Parent must file his or her grievance or appeal of a suspension, revocation or corrective action in writing to the MAFHLP Specialist within five (5) days.
2. If a grievance directly involves the MAFHLP Specialist, then the MAF Parent shall have the immediate opportunity to proceed to Step 2.
3. If a grievance is in regard to action taken by the BIA-Social Services, then the MAF Parent shall be referred to the BIA-Mescalero Agency Superintendent.
4. The MAFHLP Specialist shall respond in writing to the MAF Parent's grievance or appeal within five (5) days of his or her receipt of the grievance or appeal.
5. The response shall state the decision of the MAFHLP Specialist, the reasons for the decision, and corrective action to be taken if determined to be needed.

C. STEP 2: COMMITTEE

1. If the grievance or appeal is not addressed to the satisfaction of the MAF Parent by the MAFHLP Specialist or if the MAF Parent wishes to ask the Committee to reconsider a decision to deny a license, then he or she may ask that the Committee consider the same.
2. The request to the Committee must be in writing and submitted within five (5) days after the receipt of the decision of the MAFHLP Specialist or Committee (in the case of a non-renewal).
3. The Committee shall respond in writing to the MAF Parent's grievance within five (5) days of its receipt.
4. The response shall state the decision of the Committee, the reasons for the decision, and corrective action to be taken by the MAF Parent if determined to be needed.
5. The decision of the Committee shall be final.

SECTION 14. SUPPORT OF CHILDREN.

11-14-1. BY PARENTS. When legal custody of a child is vested by the Court in an individual or agency other than his parents or an industrial school, the Court may, in the same or any subsequent proceeding,

inquire into the ability of the parents, a parent, or any other person who may be obligated to support the child and to pay any other expenses of the child, including the expense of any medical, psychiatric, or psychological examination or treatment provided under Order of the Court. The Court may, after due notice and a hearing on the matter, require the parents or other person to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the Clerk of the Tribal Juvenile Court for transmission to the person or agency having legal custody of the child, or to whom compensation is due. The Clerk of the Court shall have authority to receive periodic payments towards the care and maintenance of the child, such as Social Security payments made in the name of or for the benefit of the child.

11-14-2. PROCEDURE FOR PAYMENT. No Court Order issued under the preceding Section against a parent or other person shall be entered unless Summons has been served on the Reservation or a voluntary appearance is made or a Waiver of Service given. The Summons shall specify that a hearing with respect to the financial support of the child will be held.

11-14-3. ENFORCEMENT OF SUPPORT ORDERS. An Order entered under §11-14-1 hereof against a parent or other person may be enforced by contempt proceedings and shall also have the effect of a judgment at law. In addition to other remedies, the Court may issue an Order to any employer, trustee, financial agency, or other person, firm, or corporation on the Reservation indebted to the parents or either of them, or indebted to any other person ordered to make payment under this Section, to withhold and pay over to the Clerk of the Court monies due or to become due not in excess of the lesser of the following:

- A. The amount ordered to be paid by the Court under §11-14-1 of this chapter, or
- B. One-fourth (1/4) of the amount due or becoming due the parent or other person at each regular or usual pay day or day of disbursement.

No property of the parents, or either of them, shall be exempt from execution to enforce collection of the amounts ordered to be paid by the Court under this Section.

11-14-4. PAYMENTS DIRECTLY TO AGENCY, REPORT TO COURT, VISITS. Payment for child support may be made to a non-governmental agency in whom the Court vests legal custody, provided that the agency shall make periodic reports of the Court concerning the care and treatment the child is receiving and his response to such treatment. Such reports shall be made at such intervals as the Court may direct, and shall be made with respect to each child at least every six (6) months. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

11-14-5. TRUST FUNDS. Any funds received for the benefit of a minor shall be deposited in a trust fund for the benefit of said minor in accordance with this chapter. The Court, upon notice of receipt of said funds, shall appoint a guardian for said minor. The guardian of each child for whose benefit funds are held in trust must petition the Tribal Court in order to withdraw said funds or any portion thereof. Said Petition must contain information fully and completely setting forth that the funds to be withdrawn are for the support, maintenance, health, welfare or education for said child, the amount sought and documentation stating why said sum is required. The Court, upon receipt of said Petition, will immediately request an investigation by the B.I.A. Social Services Office and obtain a written report authorizing payment with all trust funds and the amount of said payment. In the event payment is not approved by the B.I.A. Social Services Office, or is not in an amount sufficient to meet the needs of the child, the Petitioner may appeal the decision of the B.I.A. Social Services Office to the Tribal Council. The Tribal Council may order the Tribal Judge to make payments directly to creditors or to purchase needed items from funds in the trust account, or order payments in such manner and amount as it sees fit.

SECTION 15. TRUANCY.

11-15-1. PURPOSE. The public purpose of this Truancy Code is to help keep children in school and to combat truancy and educational neglect by providing families and children with a continuum of services through various interventions and processes. This Truancy Code seeks to protect juveniles from each other and from other persons, to reinforce parental control and responsibility for children, to protect the general public, and to reduce the incidence of juvenile delinquent behavior associated with truancy. This Truancy Code seeks to coordinate and focus the efforts of agencies within the Mescalero Apache community, such as the schools, social services, law enforcement, the Tribal Council, the Tribal Prosecutor's office and the Tribal Court, in their efforts to provide the most effective intervention for children and their families.

11-15-2. APPLICATION.

- A. Children. This Code shall apply to all children:
1. Who are enrolled members of the Mescalero Apache Tribe, regardless of their residency or where they attend school; or
 2. Who are nonmembers but either reside on the Mescalero Apache Reservation, or attend Mescalero Apache Schools.

Any child who violates this Truancy Code shall be subject to the penalties set forth herein.

- B. Adults. This Code shall apply to any adult deemed responsible for the care and supervision of a child, whether Indian or non-Indian and regardless of tribal affiliation, who resides within the exterior boundaries of the Mescalero Apache Reservation as well as any adult deemed responsible for the care and supervision of an enrolled Mescalero Apache child living off the Mescalero Apache Reservation, whether that child attends the Mescalero Apache Schools or any other school.

Any adult parent, guardian, or custodian of a child found to be in violation of this Code shall be subject to the penalties set forth herein.

11-15-3. DEFINITIONS.

- A. "Adult" means any person eighteen (18) years of age or older.
- B. "Child" means any person who has not yet attained the age of eighteen (18) years and who has not yet been emancipated by operation of law or otherwise.
- C. "Guardian" means:
1. A person who, under court order, is the guardian of the person of a child, including a foster parent;
 2. A person having custody of, or who is taking care of, a child, whether that person is a relative or not; or
 3. A person at least eighteen (18) years of age and authorized by a parent or guardian to accompany a child in a public place or to have the care and custody over such child.
 4. A social worker appointed by a court to take care, control and supervision of a child
- D. "Home School" means a parent-operated home study program of instruction that meets all established criteria and which has been officially approved by the superintendent of the Mescalero Apache Schools or other appropriate authority if not located on the Mescalero Apache Reservation.
- E. "Home School Notification" means the filing of a notice by the parent or guardian of a child with the Superintendent of the Mescalero Apache Schools, who shall in turn notify the Mescalero

Apache Juvenile Probation Office and the Tribal Court that a child is participating in a Home School program approved by the Superintendent.

- F. "Home School Truant" means a child whose parent or guardian has filed a home school notification about that child with the Superintendent but the child has failed or refused to participate in, or is no longer being offered, any home-study program of instruction.
- G. "Parent" means a person who is the natural parent, adoptive parent, step-parent or foster parent of a child.
- H. "Truancy" means the failure of a child to attend any scheduled session of the school in which the child is enrolled.

11-15-4. SCHOOL ENROLLMENT AND ATTENDANCE REQUIRED.

- A. Each parent or guardian of a school-aged child shall ensure that their child is enrolled in school for the entire school year, or shall file a Home School Notification with the superintendent of the school in which the child would otherwise have been enrolled, and shall be responsible for the child's attendance at all required class sessions.
- B. The Mescalero Apache Education Department shall be responsible for ensuring that the required notification of non-enrolled students is provided to the Tribal Court and to outlying school districts for attendance follow-up under the procedures set forth in this code.
- C. Every school-aged child is required to attend all scheduled class sessions.

11-15-5. TRUANCY PROHIBITED.

- A. Truancy is prohibited.
- B. Home School Truancy is prohibited.
- C. It shall be unlawful for any person to cause, assist, or enable a child to be truant or to be a Home School Truant.
- D. It shall be unlawful for any person who has filed a Home School Notification on behalf of a child to fail to provide the educational program specified in the Home School Notification.

11-15-6. ACKNOWLEDGEMENT OF RESPONSIBILITY REQUIRED. Each parent or guardian shall execute an acknowledgement form with respect to each individual child enrolled in school. By executing such form, each parent or guardian acknowledges that such parent or guardian is obligated to comply with all provisions of this Truancy Code and is subject to all penalties levied herein.

11-15-7. INTERVENTION. The three (3) levels of intervention in the plan to combat truancy are as follows:

- A. Level 1 (Mild) Truancy: Shall be addressed through mechanisms in the school system.
 - 1. On Day 1 of an unexcused absence, the school will phone the parent/guardian to inquire about the child's absence.
 - 2. On Day 2 of an unexcused absence, the School Liaison will visit the home and leave written notice, which will be deemed the warning notice, indicating that the child is in the second day of an unexcused absence. The warning notice will also inform the parent that a third such unexcused absence will be cause for notifying the B.I.A. Law Enforcement Office.
 - 3. On Day 3 of an unexcused absence, the school will notify B.I.A. Law Enforcement Officer who shall issue a formal citation to the parent or guardian and shall serve such citation upon said parent at any location within the exterior boundaries of the Mescalero

Apache Reservation. Issuing the citation will trigger Level 2 intervention proceedings.

- B. Level 2 (Moderate) Truancy: Shall be addressed through both the school and the Tribal Court applying "Informal Adjustment" mechanisms. "Informal Adjustment" as set forth in Section 11-8-13 of the Mescalero Apache Tribal Code allows the Court to take certain actions prior to a formal court proceeding.
1. Once the parent/child has received the citation from law enforcement, the Court will issue a summons in accordance with Section 2-3-1 of the Mescalero Apache Tribal Code. Both the parent and child will have twenty-four (24) hours to respond to the summons unless the deadline falls on a day when the Court is not open, in which case the parent and child will have until the next business day to respond. The Clerk for the Children's Court will arrange a hearing with the Children's Court judge to occur within ten (10) days. If the parent and child fail to appear, they will be deemed to be in contempt of Court with all attending penalties. The school will provide the Court with all associated documentation from the child's school record to assist the Court in fashioning an appropriate program for restoration and behavior adjustment.
 2. Informal Adjustment actions **MAY** include therapeutic, cultural and spiritual intervention for the child and the family, and/or participation in cultural events. Counseling may be conducted by traditional medicine people, traditional counselors, or professional therapists such as those from Tribal Human Services, Behavioral Health at the Mescalero Service Unit, or private providers. The Court shall take the parent's choice as to traditional or non-traditional interventions into consideration when ordering counseling. The parent and/or child may be assigned to perform community service, provide certain services to elders in the community, to actively attend school and make up all work, the parent may be ordered to attend classes with the child for a finite period of time, the child may be ordered to meet all expectations set forth by the Court and to report same to the Court on a frequent and regular basis. Such expectations may include the achievement of a certain grade point average, improvement in behavior, being prepared for class, and participating in class.
 3. Behavior problems in school or other non-compliance will be cause for the school or the Court to notify the Probation Officer who will intervene and report same to the Court. If the Court determines that the infraction is serious enough to discontinue efforts to utilize the informal adjustment process, the case will be given to the Juvenile Presenting Officer for further action.
 4. Attempts at Informal Adjustment will continue for up to thirty (30) days at which time the Court will determine whether sufficient efforts and compliance have taken place and what future action is indicated. If the efforts and compliance have not been at a satisfactory level, the Court may progress to formal proceedings. If the Court determines that sufficient progress is being made through Informal Adjustment, the Court may continue that process in thirty (30) day increments until it believes the school can handle the situation effectively on its own.
- C. Level 3 (Severe) Truancy: Shall be addressed utilizing formal Tribal Court proceedings and will be presented to the Court through the Juvenile Presenter's Office. If convicted, the student and/or parent may face penalties. Penalties may include incarceration, at the Court's discretion. Penalties may also include ordering the parent/guardian to attend classes with the student for finite periods of time. The Court may also utilize the Intergovernmental Agreement with the State of New Mexico Children, Youth and Families Department for further evaluation and treatment in State facilities.

11-15-8. PENALTIES. The maximum penalty for violation of this Code shall be labor or imprisonment for a period not to exceed ninety (90) days or a fine not to exceed Five Hundred Dollars (\$500.00), or both.

CHAPTER 12

TRAFFIC CODE

SECTION 1. DEFINITIONS

12-1-1. DEFINITION OF WORDS AND PHRASES.

- A. The following words and phrases when used in this Section shall, for the purpose of this Section, have the meanings respectively ascribed to them in §12-1-1 through §12-1-89.
- B. When in a specific Section a different meaning is given for a term defined for general purposes in this Section, the specific Section's meaning and application of the term shall control.

12-1-2. ABANDONED VEHICLE. "Abandoned Vehicle" means a vehicle or motor vehicle left unattended, on either private or public property for an unreasonable length of time, and which, after being reported to a Law Enforcement Agency on the Reservation, has been by that agency discovered:

- A. not to have been stolen;
- B. the legal ownership of which cannot be established by normal record-checking procedures; and
- C. the legal ownership of which is not claimed or asserted by any person.

12-1-3. ADMINISTRATOR. "Administrator" means President of the Mescalero Apache Tribe or the President's designee.

12-1-4. ALLEY. "Alley" means a street intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

12-1-5. AUTHORIZED EMERGENCY VEHICLE. "Authorized Emergency Vehicle" means any vehicle of the fire department, police vehicles, ambulances and such emergency vehicles of the Mescalero Apache Tribe as are designated or authorized by the chief of the Reservation Law Enforcement Agency.

12-1-6. BICYCLE. "Bicycle" means every device propelled by human power, upon which any person may ride, having two (2) tandem propelled wheels, except scooters and similar devices.

12-2-7. BUS. "Bus" means every motor vehicle designed and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

12-1-8. BUSINESS DISTRICT. "Business District" means the area so designated by the President.

12-1-9. CANCELLATION. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

12-1-10. COMBINATION. "Combination" means any connected assemblage of a motor vehicle and one or more semi-trailers, trailers, or semi-trailers converted to trailers by means of a converter gear.

12-1-11. CONTROLLED ACCESS STREET. "Controlled Access Street" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right to access to or from the same except at such points only and in such manner as may be determined by the Tribe.

12-1-12. CONVERTER GEAR. "Converter Gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in combination to support the front end of a semi-trailer but not permanently attached thereto.

12-1-13. CROSSWALK. "Crosswalk" means:

- A. That part of a street at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- B. Any portion of a street at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

12-1-14. CURB LOADING ZONE. "Curb Loading Zone" means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

12-1-15. DAYTIME. "Daytime" means from a half hour before sunrise to a half hour after sunset.

12-1-16. DEALER. "Dealer" means every person, excluding those who have financed or repossessed vehicles, engaged in the business of buying, selling or exchanging vehicles, if he trades, sells, or barter three or more vehicles, motor vehicle or trailers subject to registration in this state, in any calendar year, other than a motor vehicle titled or registered for his personal use.

12-1-17. DIRECTOR. "Director" means the President of Mescalero Apache Tribe or the President's designee.

12-1-18. DIVIDED STREET. "Divided Street" means any street containing a physical barrier, intervening space or clearly indicated dividing section so construed to impede vehicular traffic and separating vehicular traffic traveling in opposite directions.

12-1-19. DIVISION. "Division" shall mean the person, section or department of the Executive Department of the Mescalero Apache Tribe so designated by the President, or if no such designation has been made, then the President.

12-1-20. DRIVEAWAY-TOWAWAY OPERATION. "DriveAway-TowAway Operation" means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one set or more of wheels of any such motor vehicle or motor vehicles are on the street during the course of transportation, whether or not any such motor vehicle furnishes the motive power.

12-1-21. DRIVER. "Driver" means every person who drives or is in actual physical control of a motor vehicle, including a motor-driven cycle, upon a street or who is exercising control over, or steering, a vehicle being towed by a motor vehicle.

12-1-22. DRIVER'S LICENSE. "Driver's License" means any license to operate a motor vehicle issued under the laws of New Mexico or the Mescalero Apache Tribe.

12-1-23. EXPLOSIVES. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

12-1-24. FARM TRACTOR. "Farm Tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows and moving machines and other implements of husbandry.

12-1-25. FIRST OFFENDER. "First Offender" means a person who has been convicted in a trial Court under state or federal law or municipal or tribal ordinance of the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which renders him incapable of driving a motor vehicle, and includes a person who plead guilty to the charge or plead nolo contendere to the charge, whether or not his sentence was suspended or deferred, or a person who was convicted, plead guilty to the charge or plead nolo contendere but had such conviction dismissed by virtue of his attendance at, and successful completion of, a driver rehabilitation program or a "driving-while intoxicated school."

12-1-26. FLAMMABLE LIQUID. "Flammable Liquid" means any liquid which has a flash point of seventy degrees Fahrenheit (70°F), or less, as determined by a Tagliabue or equivalent closed-cup test device.

12-1-27. FREIGHT CUR LOADING ZONE. "Freight Curb Loading Zone" means a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight.

12-1-28. HOUSE TRAILER. "House Trailer" means any vehicle without motive power designed or used as a mobile home, office, shop, or as a recreational, camping or travel facility.

12-1-29. IMPLEMENT OF HUSBANDRY. "Implement of Husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

12-1-30. INTERSECTION.

A. "Intersection" means:

1. The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways or two streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.
2. Where a street includes two roadways thirty feet (30') or more apart, then every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event such intersecting street also includes two roadways thirty feet (30') or more apart, then every crossing of two roadways thirty feet (30') or more apart shall be regarded as a separate intersection.

B. The junction of an alley with a roadway shall not constitute an intersection.

12-1-31. INTERSTATE HIGHWAY. "Interstate Highway" means any public highway which has been designated as an interstate highway by the government of the United States.

12-1-32. LANED ROADWAY. "Laned Roadway" means a roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

12-1-33. LAW ENFORCEMENT OFFICER. "Law Enforcement Officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of this Motor Vehicle Code.

12-1-34. LICENSE OR LICENSE TO OPERATE A MOTOR VEHICLE. "License or License to Operate a Motor Vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of New Mexico or the Mescalero Apache Tribe including:

- A. Any temporary license or instruction permit;
- B. The privilege of any person to drive a motor vehicle whether or not the person holds a valid license; and
- C. Any non-resident's operating privilege as defined herein.

12-1-35. METAL TIRE. "Metal Tire" means every tire the surface of which in contact with the street is wholly or partially metal or other hard non-resilient material, except that for the purposes of this chapter, a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

12-1-36. MOBILE HOME. "Mobile Home" means a house trailer, other than one held as inventory for sale or resale, that exceeds either a width of eight feet (8') or a length of forty feet (40'), when occupied for the road.

12-1-37. MOPED. "Moped" means a two-wheeled or three-wheeled vehicle having fully operative pedals for propulsion by human power, an automatic transmission and a motor having a piston displacement of less than fifty cubic centimeters, which is capable of propelling the vehicle at a maximum speed of not more than twenty-five miles an hour on level ground.

12-1-38. MOTORCYCLE. "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

12-1-39. MOTOR DRIVEN CYCLE. "Motor Driven Cycle" means every motorcycle, motor scooter and moped having an engine with less than one hundred cubic centimeters displacement.

12-1-40. MOTOR SCOOTER. "Motor Scooter" means a motor-driven cycle as defined in this Section.

12-1-41. MOTOR VEHICLE. "Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails.

12-1-42. NIGHTTIME. "Nighttime" means the hours from a half hour after sunset to a half hour before sunrise.

12-1-43. NON-RESIDENT. "Non-resident" means every person who is not a resident of this Reservation.

12-1-44. OFFICIAL TIME STANDARD. "Official Time Standard" means whenever certain hours are named in this chapter they shall mean standard time or daylight-savings time as may be in current use on this Reservation.

12-1-45. OFFICIAL TRAFFIC-CONTROL DEVICES. "Official Traffic Control Devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

12-1-46. OPERATOR. "Operator" means driver, as defined in §12-1-21.

12-1-47. OWNER. "Owner" means a person who holds the legal title of a vehicle or, in the event of a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or, in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

12-1-48. PARK OR PARKING. "Park or Parking" when prohibited means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

12-1-49. PASSENGER CURB LOADING ZONE. "Passenger Curb Loading Zone" means a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

12-1-50. PEDESTRIAN. "Pedestrian" means any person on foot.

12-1-51. PERSON. "Person" means every natural person, firm, co-partnership, association, corporation, or other legal entity.

12-1-52. POLE TRAILER. "Pole Trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly-shaped loads such as poles, structures, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

12-1-53. PRIVATE ROAD OR DRIVEWAY. "Private Road or Driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons.

12-1-54. PUBLIC HOLIDAYS. "Public Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or any other day designated a holiday by the Tribal Council.

12-1-55. RAILROAD. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

12-1-56. RAILROAD SIGN OR SIGNAL. "Railroad Sign or Signal" means any sign, signal or device created or erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

12-1-57. RAILROAD TRAIN. "Railroad Train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

12-1-58. RECREATIONAL VEHICLE. "Recreational Vehicle" means a vehicle which is composed of a chassis, or a frame with wheels, which either has its own motive power or is drawn by another vehicle, and a camping body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities.

12-1-59. REGISTRATION NUMBER. "Registration Number" means the number assigned by the Motor Vehicle Division to the owner of a vehicle or motor vehicle required to be registered by the New Mexico Motor Vehicle Code.

12-1-60. REGISTRATION PLATE. "Registration Plate" means the plate, marker, sticker, or tag assigned by the New Mexico Motor Vehicle Division for the identification of the registered vehicle.

12-1-61. RESIDENCE DISTRICT. "Residence District" means the territory contiguous to and including a street not comprising a business district when the property on such street for a distance of three hundred feet (300') or more is in the main improved with residences or residences and buildings in use for business.

12-1-62. REVOCATION. "Revocation" means that the driver's license and privilege to drive a motor vehicle on the Reservation are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one (1) year after date of revocation.

12-1-63. RIGHT-OF-WAY. "Right-of-way" means the privilege of the immediate use of the roadway.

12-1-64. ROAD TRACTOR. "Road Tractor" means every motor vehicle designed and used for drawing other vehicles and not so construed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

12-1-65. ROADWAY. "Roadway" means that portion of a street improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

12-1-66. SAFETY ZONE. "Safety Zone" means the area or space officially set apart within a street for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

12-1-67. SCHOOL BUS. "School Bus" means any motor vehicle operating under the jurisdiction of the New Mexico Board of Education or private school, parochial school or tribal school interests which is

used to transport children, students or teachers to and from any school activity, but not including any vehicle:

- A. Operated by a common carrier, subject to and meeting all requirements of the State Corporation Commission but is not used exclusively for transportation of pupils;
- B. Operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the State Corporation Commission but is not used exclusively for transportation of pupils; or
- C. Operated as a per capita feeder as defined in state law.

12-1-68. SEMI-TRAILER. "Semi-trailer" means any vehicle, without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

12-1-69. SIDEWALK. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

12-1-70. SOLID TIRE. "Solid Tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

12-1-71. STAND OR STANDING. "Stand or Standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

12-1-72. STATE. "State" means a state, territory or possession of the United States, District of Columbia, the Commonwealth of Puerto Rico or a Province of Canada.

12-1-73. STATE HIGHWAY. "State Highway" means any public highway which has been designated as a state highway, either by the legislature, the State Highway Commission or the Chief Highway Engineer.

12-1-74. STOP. "Stop," when required, means complete cessation from movement.

12-1-75. STOP, STOPPING OR STANDING. "Stop, Stopping or Standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a Law Enforcement Officer or traffic-control sign or signal.

12-1-76. STREET OR HIGHWAY. "Street or Highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

12-1-77. SUBSEQUENT OFFENDER. "Subsequent Offender" means a person, who, under state law, federal law, tribal ordinance or municipal ordinance, has been convicted, plead nolo contendere, or plead guilty to the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which rendered him incapable of safely driving a motor vehicle, and who was previously a "first offender" as defined in this Section or whose sentence was suspended or deferred, or the deferred sentence was subsequently dismissed.

12-1-78. SUSPENSION. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension.

12-1-79. TAXICAB. "Taxicab" means a motor vehicle used in the transportation of persons for hire, having a normal seating capacity of not more than seven persons.

12-1-80. THROUGH STREET. "Through Street" means every street or portion thereof at the entrance to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

12-1-81. TRAFFIC. "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any street for purposes of travel.

12-1-82. TRAFFIC CONTROL SIGNAL. "Traffic Control Signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

12-1-83. TRAILER. "Trailer" means any vehicle, without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no part of its weight rests upon the towing vehicle.

12-1-84. TRIAL COURT. "Trial Court" means the Tribal Court.

12-1-85. TRUCK. "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

12-1-86. TRUCK TRACTOR. "Truck Tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so construed as to carry a load other than a part of the weight of the vehicle and load so drawn.

12-1-87. VALIDATING STICKER. "Validating Sticker" means the tab or sticker issued by the State of New Mexico, any other appropriate state or the Division to signify, upon a registration plate, renewed registration.

12-1-88. VEHICLE. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a street, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

12-1-89. ANY OTHER TERM. Any other term used in this chapter is used in its commonly accepted meaning except where such other term has been defined elsewhere in this chapter.

SECTION 2. TRAFFIC ADMINISTRATION.

12-2-1. TRAFFIC DIVISION ESTABLISHED. A Traffic Division of the Mescalero Apache Tribe Law Enforcement Office may be established by the President.

12-2-2. ADMINISTRATION OF TRAFFIC DIVISION. When so established the Traffic Division shall be under the control of the President, and the President shall make such appointments as are appropriate.

12-2-3. DUTIES OF TRAFFIC DIVISION. The Traffic Division, with such assistance as may be rendered by the other divisions or agencies of the Mescalero Apache Tribe or the B.I.A., shall:

- A. Enforce traffic regulations applicable to street traffic;
- B. Make arrests for traffic violations;
- C. Investigate accidents;
- D. Cooperate with tribal officials in the administration of traffic laws and regulations and in developing methods to improve traffic conditions; and
- E. Carry out those duties imposed on it by this Section.

12-2-4. RECORDS OF TRAFFIC DIVISION.

- A. The traffic division of the law enforcement department shall keep a record of traffic accidents, warnings, arrests, convictions, complaints and alleged violations of this Section or state vehicle laws reported for each person within its jurisdiction.
- B. The records shall be filed alphabetically under the name of the person concerned.
- C. Each person's record shall:

1. Include a record of the final disposition of all alleged violations of this Code, state laws or municipal laws;
2. Show all types of violations and the total of each type; and
3. Accumulate during at least a five (5) year period and shall be maintained complete for at least the most recent five (5) year period.

SECTION 3. APPLICATION OF TRAFFIC REGULATIONS.

12-3-1. OBEDIENCE TO TRAFFIC CODE. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in the Chapter.

12-3-2. OBEDIENCE TO OFFICERS. No person shall willfully fail or refuse to comply with any lawful order or direction of any Law Enforcement Officer invested by this Motor Vehicle Code with authority to direct, control or regulate traffic.

12-3-3. AUTHORITY OF POLICE AND FIRE DEPARTMENTS.

- A. It is the duty of the Reservation Law Enforcement Officers, or such officers as may be assigned by the President, to enforce all traffic laws of this Reservation and all applicable state vehicle laws.
- B. B.I.A. Officers, or such officers as they be assigned by the President, are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws and regulations. However, in the event of a fire or other emergency, they may direct as conditions require, notwithstanding provisions of the traffic laws and regulations, in order to expedite traffic or to safeguard pedestrians.
- C. Conservation Officers of the Mescalero Apache Tribe may direct or assist in directing traffic at the scene of a fire or in its immediate vicinity.
- D. It is the duty of other police officers holding commissions issued by the President of the Mescalero Apache Tribe to enforce all traffic laws of this Reservation and all applicable state vehicle laws.

12-3-4. AUTHORIZED EMERGENCY VEHICLES.

- A. The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this Section subject to the conditions stated. The President may designate emergency vehicles and revoke the designation. When vehicles are so designated, they are authorized emergency vehicles.
- B. The driver of an authorized emergency vehicle may:
 1. Park or stand, irrespective of the provisions of this Code;
 2. Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation;
 3. Exceed the maximum speed limits so long as he does not endanger life or property; and
 4. Disregard regulations governing direction of movement or turning in specified directions.
- C. The exemptions granted to an authorized emergency vehicle apply only when the driver of the vehicle, while in motion, sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary and when the vehicle under normal atmospheric conditions from a distance of five hundred feet (500') to the front of the vehicle, except that an authorized emergency vehicle

operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

- D. This Section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor does it protect the driver from the consequences of his reckless disregard for the safety of others.

12-3-5. APPLICATION OF TRAFFIC CODE TO PERSONS PROPELLING PUSH CARTS, RIDING ANIMALS OR DRIVING ANIMAL-DRAWN VEHICLES. Every person riding an animal, driving any animal-drawn vehicle, or propelling a push cart upon a street shall be granted all of the rights and shall be subjected to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application, and except where otherwise specifically provided in this chapter.

12-3-6. USE OF COASTER WAGONS, ROLLER SKATES, SKATEBOARDS AND SIMILAR DEVICES RESTRICTED. No person upon roller skates, or riding on or by means of any coaster wagon, skateboard, toy vehicle, or similar device, shall go upon any street except while crossing a street on a crosswalk, and when so crossing the person shall be granted all of the rights and be subject to all of the duties applicable to pedestrians as provided for in this chapter.

12-3-7. PUBLIC OFFICERS AND EMPLOYEES TO OBEY ORDINANCES-EXCEPTIONS.

- A. The provisions of this chapter, applicable to the drivers of vehicles on the street, shall apply to the drivers of all vehicles owned or operated by the United States, the Tribe or the State of New Mexico, or any county, city, town, district, or any political subdivision of the state, except as provided, in this Section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.
- B. Unless specifically made applicable, the provisions of this chapter shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

SECTION 4. ACCIDENTS AND ACCIDENT REPORTS.

12-4-1. ACCIDENTS INVOLVING DEATH OR PERSONAL INJURY. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of §12-4-3. Every such stop shall be made without obstructing traffic more than is necessary.

12-4-2. ACCIDENTS INVOLVING DAMAGE TO VEHICLE. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of §12-4-3. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of an offense.

12-4-3. DUTY TO GIVE INFORMATION AND RENDER AID. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

12-4-4. DUTY UPON STRIKING UNATTENDED VEHICLE. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

12-4-5. DUTY UPON STRIKING FIXTURES OR OTHER PROPERTY UPON A STREET. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request exhibit his driver's license and shall make a written report of such accident to the Reservation Law Enforcement Agency within five (5) days of the accident. If the driver is physically incapable of making a report and such driver is not the owner, the owner shall make the report.

12-4-6. IMMEDIATE NOTICE OF ACCIDENTS.

- A. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of One Hundred Dollars (\$100.00) or more, shall immediately, by the quickest means of communication, give notice of such accident to the Reservation Law Enforcement Officers.
- B. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in Subsection A and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall give or cause to be given the notice not given by the driver.

SECTION 5. SIGNS, SIGNALS, AND MARKINGS.

12-5-1. AUTHORITY TO INSTALL TRAFFIC-CONTROL DEVICES. Subject to the United States Code and the Code of Federal Regulations, the Tribal President or the President's authorized designee shall place and maintain such traffic control devices as necessary to carry out provisions of this chapter and to regulate, warn or guide traffic.

12-5-2. MANUAL AND SPECIFICATIONS FOR TRAFFIC CONTROL DEVICES. The Tribal President or his designee shall place and maintain such traffic-control devices upon streets within the Reservation as he may deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn or guide traffic.

12-5-3. OBEDIENCE TO REQUIRED TRAFFIC-CONTROL DEVICES. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a Reservation Law Enforcement Officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

12-5-4. WHEN OFFICIAL TRAFFIC-CONTROL DEVICES REQUIRED FOR ENFORCEMENT PURPOSES. No provisions of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Section does not state that signs are required, such Section shall be effective even though no signs are erected or in place.

12-5-5. OFFICIAL TRAFFIC-CONTROL DEVICES-PRESUMPTION OF LEGALITY.

- A. Whenever official traffic control devices are placed in position conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

- B. Any official traffic-control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter unless the contrary shall be established by competent evidence.

12-5-6. LIGHTS AND THEIR APPLICATION TO VEHICLES AND PEDESTRIANS. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively or (1) at a time or in combination, only the colors green, yellow, and red shall be used, except for special pedestrian control signals carrying a word legend, and the lights indicate and apply to drivers of vehicles and pedestrians:

A. Green alone:

1. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at the place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited; and
2. Pedestrians facing the signal may proceed across the street within any marked or unmarked crosswalk.

B. Yellow alone when shown following the green signal:

1. Vehicular traffic facing the signal is warned that the red signal will be exhibited immediately thereafter and the vehicular traffic shall not enter the intersection when the red signal is exhibited except to turn right as hereinafter provided; and
2. No pedestrian facing the signal shall enter the street until the green is shown alone unless authorized to do so by a pedestrian "walk" signal.

C. Red alone:

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then before entering the intersection, and may then turn right after standing until the intersection may be entered safely, provided that such vehicular traffic shall yield the right-of-way to all pedestrians and vehicles lawfully in or approaching the intersection; and
2. Vehicular traffic on a one-way street facing the signal shall stop before entering the crosswalk on the near side of the intersection or if there is no crosswalk, then before entering on the intersection, and if a left turn onto a one-way street in the proper direction is intended, may turn left after stopping until the intersection may be entered safely, provided that such vehicular traffic shall yield the right-of-way to all pedestrians and vehicles lawfully in or approaching the intersection; and
3. Whenever the administrator determines on the basis of an engineering and traffic investigation that a turn as hereinabove provided should be prohibited at a particular intersection, such turn may be prohibited by the posting of signs at the intersection indicating that such a turn is prohibited; and
4. No pedestrian facing the signal shall enter the street until the green is shown alone unless authorized to do so by a pedestrian "walk" signal.

D. Red with green arrow:

1. Vehicular traffic facing the signal may cautiously enter the intersection only to make the movement indicated by the arrow, but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection; and

2. No pedestrian facing the signal shall enter the street unless he can do so safely without interfering with any vehicular traffic.
- E. If an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this Section apply except to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.
- F. When a sign is in place permitting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make the turn indicated by the sign after stopping as required by Subsection C(1). Vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and of other traffic lawfully using the intersection.

12-5-7. PEDESTRIAN CONTROL SIGNALS. Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place:

- A. "Walk" indicates that pedestrians facing the signal may proceed across the street in the direction of the signal and shall be given the right-of-way by drivers of all vehicles; and
- B. "Don't Walk" indicates that no pedestrian shall start to cross the street in the direction of the signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.

12-5-8. FLASHING SIGNAL.

- A. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:
 1. Flashing red (stop signal)-when a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or the nearest crosswalk at an intersection or a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; or
 2. Flashing yellow (caution signal)-when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
- B. This Section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in § 12-6-7.5 through § 12-6-7.8 of this chapter.

12-5-9. LANE DIRECTION-CONTROL SIGNALS. When lane-direction-control signals are placed over the individual lanes of a street, vehicular traffic may travel in any lane over which a green signal is shown, but a vehicle shall not enter or travel in any lane over which a red signal is shown.

12-5-10. DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.

- A. No person shall place, maintain, or display upon or in view of any street any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movements of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.
- B. Every such prohibited sign, signal, marking is hereby declared to be a public nuisance and the

Tribal President is hereby empowered to remove the same or cause it to be removed with notice.

- C. The provisions of this Section shall not prohibit the erection of signs upon private property adjacent to street if the signs give useful directional information and are of a type that cannot be mistaken for official signs.

12-5-11. INTERFERENCE WITH OFFICIAL TRAFFIC-CONTROL DEVICES OR RAILROAD SIGNALS.

- A. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon or any other part thereof.
- B. No person shall hide or obscure any official traffic-control device or railroad sign or signals by parking a vehicle or erecting any object or by allowing bushes, hedges, trees, or other vegetation to grow so as to obscure traffic control devices or railroad signals. An obstruction includes, but is not limited to, any sign, fence, ornament, hedge, shrub, tree or display, but it does not include a building.
- C. Unobstructed vision for traffic safety shall be maintained by the property owner or occupant on all corner lots regardless of the zone classification. No obstruction between three feet (3') and eight feet (8') above the street level shall be placed or maintained within a triangular area bounded by the street property lines of the corner lot and a line connecting the points twenty-five feet (25') distant from the intersection of the property lines of such lot.
- D. Every obstruction interfering with official traffic-control devices or railroad signals is a public nuisance, and the Administrator may remove the obstruction or cause it to be removed without notice or assess costs involved to the violator.

12-5-12. PLAY STREETS.

- A. The Tribal President has authority to declare any street or part of a street a temporary play street and to place appropriate signs or devices in the street to indicate and help protect the street.
- B. Whenever authorized signs are erected to indicate a play street no person shall drive on the street except drivers of vehicles whose residences are within a closed area. Such drivers shall exercise the greatest care in driving on the play street.

12-5-13. CROSSWALKS AND SAFETY ZONES. The Tribal President, upon the basis of engineering and traffic study investigations, may:

- A. Designate and maintain crosswalks by appropriate devices, marks or lines on the surface of the street where, in his opinion, there is particular danger to pedestrians crossing the street; and
- B. Establish safety zones of the kind and character and at places he deems necessary for the protection of pedestrians.

12-5-14. TRAFFIC LANES.

- A. The Tribal President, upon the basis of engineering and traffic study investigations, may mark traffic lanes upon any street where a regular alignment of traffic is necessary.
- B. Where such traffic lanes have been marked, it is unlawful for the operator of a vehicle to fail to keep the vehicle within the boundaries of the lane except when lawfully passing another vehicle or when making a lawful turning movement.

SECTION 6. TRAFFIC REGULATIONS.

12-6-1. SPEED REGULATIONS.

- A. **BASIC RULE.** No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards when existing. Consistent with the foregoing every person shall drive at safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding street and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.
- B. **SPEED LIMITS.**
1. No person shall drive a vehicle on a street at a speed greater than:
 - a. Fifteen (15) miles per hour on all streets when passing a school while children are going to, or leaving, school, and when the school zone is properly posted;
 - b. Thirty (30) miles per hour in any business or residential district; or
 - c. The lawfully posted speed limit when signs are erected giving notice of the speed limit.
 2. In every event, speed shall be so controlled as may be necessary:
 - a. To avoid colliding with any person, vehicle or other conveyance on, or entering, the street; and
 - b. To comply with legal requirements as may be established by the Administrator or the Reservation Law Enforcement Department, and the duty of all persons to use due care.
- C. **REGULATION OF SPEED BY TRAFFIC SIGNALS.** The Tribal President is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersection and shall erect appropriate signs giving notice thereof.
- D. **MINIMUM SPEED REGULATION.**
1. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with this chapter.
 2. Whenever the Tribal President determines, on the basis of an engineering and traffic investigation, that slow speeds on any part of a street consistently impede the normal and reasonable movement of traffic, the Tribal President may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with this chapter.
 3. Law Enforcement Officers may enforce this Section by directions to driver. In the event of apparent willful disobedience to this Section and refusal to comply with directions of an officer in accordance herewith, the continued slow operation by a driver is a violation of this Section.
- E. **Charging Violations.**
1. In every charge of violation of any speed regulation under this chapter, the Complaint and the Uniform Traffic Citation shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.
 2. Provisions of this chapter for maximum speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the

defendant as the proximate cause of an accident.

F. SPECIAL SPEED LIMITATIONS.

1. Subject to the requirements of §12-9-1-O of this chapter, no person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten (10) miles per hour.
2. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure.

12-6-2. DRIVING ON RIGHT SIDE OF STREET-OVERTAKING AND PASSING-USE OF STREET.

A. Drive on right side of the street-Exception.

1. Upon all streets of sufficient width a vehicle shall be driven upon the right half of the street, and where practicable, entirely to the right of the center thereof, except as follows:
 - a. When overtaking and passing another vehicle proceeding in the same directions under the rules governing such movement;
 - b. When an obstruction exists making it necessary to drive to the left of the center of the street, provided that any person driving to the left shall yield the right-of-way to all vehicles;
 - c. When the right half of a street is closed to traffic while under construction or repair;
 - d. Upon a street divided into three marked lanes for traffic under the rules applicable thereon; or
 - e. Upon a street designated and posted for one-way traffic.
2. Upon all streets, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing as practicable to the right-hand curb or edge of the street except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.
3. Upon any street having four (4) or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the street, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the street for use by traffic not otherwise permitted to use such lanes, or except as permitted under Subsection 12-6-2-A-2. However, this Section shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

B. PASSING VEHICLES PROCEEDING IN OPPOSITE DIRECTION. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon streets having width for not more than (1) one line of traffic in each direction each driver shall give to the other at least one-half (1/2) of the main-traveled portion of the street as nearly as possible.

C. OVERTAKING A VEHICLE ON THE LEFT. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the

street until safely clear of the overtaken vehicle; and

2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

D. **LIMITATIONS ON OVERTAKING ON THE LEFT.** No vehicle shall be driven to the left side of the center of the street in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand of the street before coming within one hundred feet (100') of any vehicle approaching from the opposite direction.

E. **FURTHER LIMITATIONS ON DRIVING ON LEFT OF CENTER OF STREET.**

1. No vehicle shall at any time be driven to the left side of the street under the following conditions:
 - a. When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - b. When approaching within one hundred feet (100') of or traversing any intersection or railroad grade crossing; or
 - c. When the view is obstructed upon approaching within one hundred feet (100') of any bridge, viaduct, or tunnel.
2. The foregoing limitations shall not apply:
 - a. Upon a one-way street;
 - b. Under the conditions described in § 12-6-1-A-2; or
 - c. To the driver of a vehicle turning left into or from an alley, private roadway or driveway.

F. **WHEN OVERTAKING ON THE RIGHT IS PERMITTED.**

1. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - a. When the vehicle overtaken is making or about to make a left turn;
 - b. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction; or
 - c. Upon a one-way street, or upon any roadway on which traffic is restricted to one (1) direction of movement, where the street is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.
2. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the street.

G. **NO PASSING ZONES AND RESTRICTIONS ON PASSING.**

1. The Tribal President may determine those portions of any street or highway under his

jurisdiction where overtaking and passing or driving on the street would be especially hazardous and may, by appropriate signs or markings on the street indicate the beginning and end of such zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the direction thereof.

2. Where signs or markings are in place to define a no-passing zone as set forth in Subsection G-1 of this Section, no driver shall at any time drive on the left side of the street within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length. This Section does not apply under the conditions described in §12-6-2-A-1-b or to the driver of a vehicle turning left into or from an alley, private road or driveway.
3. When double yellow lines are painted on a pavement, no driver shall drive any vehicle across the lines except the driver of a vehicle turning left into or from an alley, private road or driveway.
4. No driver shall overtake and pass any other vehicle proceeding in the same direction in a school zone when the school zone signs are in place.
5. Whenever a vehicle is stopped at a marked crosswalk or an unmarked crosswalk at an intersection to permit a pedestrian to cross the street, pass the stopped vehicle.

H. AUTHORITY TO DESIGNATE ONE-WAY STREETS AND ALLEYS.

1. The Tribal President may designate and assign streets and alleys as one-way streets and alleys. This designation shall be made only upon the basis of engineering and traffic investigation.
2. Signs indicating the direction of lawful traffic movement shall be placed at every intersection, where movement of traffic in the opposite direction is prohibited. No regulations as to one-way traffic shall be effective unless signs are in place indicating the direction of the flow of traffic.
3. The Tribal President shall maintain a schedule of all streets and alleys which have been established as one-way and shall provide copies of the schedule to the appropriate Reservation Law Enforcement Officer, Tribal Secretary, and Tribal Judge.

I. OBEDIENCE TO SIGNS DESIGNATING ONE-WAY STREETS AND ALLEYS.

1. Upon those streets and parts of streets, and those alleys restricted to movement in one direction, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.
2. Failure to comply with such signs is a violation of this chapter.

J. ROTARY TRAFFIC ISLANDS. A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

K. RESTRICTED DIRECTION OF MOVEMENT OF STREETS DURING CERTAIN PERIODS.

1. The Tribal President may determine and designate streets, parts of streets or specific lanes upon which vehicular traffic shall proceed in one direction during one period of the day and the opposite direction during another period of the day. This designation shall be made only upon the basis of engineering and traffic investigation.
2. Appropriate markings, signs, barriers or other devices shall be placed to give notice of the restricted movement.

3. Signs may be placed temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the street.

L. **DRIVING ON STREETS LANED FOR TRAFFIC.** Whenever any street has been divided into two or more clearly marked lanes for traffic the following rules, in addition to all others consistent herewith, shall apply:

1. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;
2. Upon a street which is divided into three (3) lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the street is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is posted to give notice of such allocation;
3. Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the directions of every such device.
4. Official traffic-control devices may be installed prohibiting the changing of lanes on Sections of streets, and drivers of vehicles shall obey the directions of every device.

M. **FOLLOWING TOO CLOSELY.**

1. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of the highway.
2. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a street outside of a business or residence district, shall not follow another motor truck or motor vehicle drawing another vehicle within three hundred feet (300'), except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing by any like vehicle or another vehicle.
3. Motor vehicles being driven upon any street outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall not follow the proceeding vehicle closer than three hundred feet (300'). This provision shall not apply to funeral processions, nor shall it apply within or outside of a business or residential district to motor vehicle escort vehicles of a motor vehicle escort service, which may, if necessary to maintain the continuity of the escorted unit or units, precede or follow at a distance closer than three hundred feet (300') to the escorted unit or units.

N. **DRIVING ON DIVIDED STREETS.**

1. Whenever any street has been divided into two (2) roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing Section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand segment of the divided street unless directed or permitted to use another segment by official traffic-control devices or Law Enforcement Officer.
2. No vehicle shall be driven over, across, or within any such dividing space, barrier, or Section, except through an opening in such physical barrier or dividing Section or space or at a crossover or intersection established by public authority.
3. Where recessed cut-outs are provided in dividers to facilitate left turns, all vehicles,

except those having a turning radius precluding use of such recessed cut-outs, shall execute a left turn by occupying the recess or cut-out prior to entering the intersection.

- O. CONTROLLED ACCESS. No person shall drive a vehicle onto or from any controlled-access street except at such entrances and exits as are established by public authority.
- P. RESTRICTION ON USE OF CONTROLLED-ACCESS STREETS.
 - 1. No pedestrian, bicycle or other non-motorized traffic shall use any controlled-access street, but notwithstanding this provision, drivers of vehicles using the controlled-access street are not relieved of responsibility by public authority.
 - 2. In addition to the provisions of paragraph 1, the Tribal Council may, by ordinance, regulate or prohibit the use of any controlled-access street within the Reservation by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.
 - 3. No driver shall stop a vehicle upon any controlled-access street for the purpose of taking on or discharging passengers, freight or merchandise.
 - 4. The Tribal President has the authority to erect and maintain official traffic-control devices on the controlled-access street on which the restrictions are applicable, and when such traffic-control devices are in place, no person shall disobey the restrictions stated on the devices.

12-6-3. DESIGNATING STOP AND YIELD INTERSECTIONS.

- A. THROUGH STREETS DESIGNATED.
 - 1. The Tribal President, upon traffic and engineering study and investigation, may designate which streets shall be through streets.
 - 2. A schedule of the through streets shall be prepared by the Tribal president with copies furnished to the Tribal Secretary and Tribal Court.
- B. AUTHORITY TO ERECT STOP AND YIELD SIGNS AT THROUGH STREETS.
 - 1. Whenever the Tribal President designates and describes a through street, the President's designee shall place and maintain a stop sign, or a yield sign, on each and every street intersecting the through street unless traffic at any such intersection is controlled at all times by traffic-control signals.
 - 2. However, at the intersection of two through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches to both of said streets in a manner determined by the Tribal President upon the basis of an engineering and traffic study.
- C. AUTHORITY TO ERECT STOP OR YIELD SIGNS AT OTHER INTERSECTIONS. The Tribal President may determine and designate intersections other than through streets where particular hazards exist and determine:
 - 1. Whether vehicles shall stop at one or more entrances to the intersection, in which event he shall have erected a stop sign at every place where a stop is required; or
 - 2. Whether vehicles shall yield the right-of-way to vehicles on a different street at the intersection, in which event he shall have erected a yield sign at every place where obedience thereto is required.

12-6-4. RIGHT-OF-WAY.

A. VEHICLE APPROACHING OR ENTERING INTERSECTION.

1. The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different street.
2. When two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.
3. The right-of-way rules declared in Subsections 1 and 2 are modified at through streets and otherwise as provided in this chapter.
4. The driver of a vehicle approaching or entering an interstate highway shall yield the right-of-way to the vehicles on the interstate highway.

B. VEHICLES TURNING LEFT AT INTERSECTION. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

C. VEHICLE ENTERING STOP OR YIELD INTERSECTION.

1. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in this chapter.
2. Except when directed to proceed by a Law Enforcement Officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by § 12-6-4-C-5 and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another street or which is approaching so closely on the street as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.
3. The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any vehicle in the intersection or approaching on another street so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right-of-way.
4. Except when directed to proceed by a Law Enforcement Officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop completely before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street before entering the intersection.
5. The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none then at a point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

12-6-5. TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING.

A. REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTION. The driver of a

vehicle intending to turn at an intersection shall do so as follows:

1. Both the approach for a right turn and a left turn shall be made as close as practicable to the right-hand turn or edge of the street.
2. At any intersection where traffic is permitted to move in both directions on each street entering the intersection, an approach for a left turn, except where left-turn provisions are made, shall be made in that portion of the right half of the street nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the street being entered. Whenever practicable the left turn shall be accomplished to the left of the center of the intersection.
3. Upon a street with two (2) or more lanes for through traffic in each direction, where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this Section.
4. At any intersection where traffic is restricted to one (1) direction on one (1) or more of the streets, the driver of a vehicle intending to turn left at any such intersection shall commence the left turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, on the left-hand lane that is lawfully available to traffic moving in such direction upon the street being entered.

- B. **AUTHORITY TO PLACE DEVICES ALTERING NORMAL COURSE FOR TURNS.** The Tribal President may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in § 12-6-5-A be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by the markers, buttons or signs.

- C. **AUTHORITY TO PLACE RESTRICTED TURN SIGNS.**
1. The Tribal President may determine those intersections at which drivers of vehicles shall not make a right, left or U-turn and shall place proper signs at the intersections.
 2. The marking of the turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when the turns are permitted.
- D. **OBEDIENCE TO NO-TURN SIGNS.** Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the direction of the sign.
- E. **LIMITATIONS ON TURNING AROUND.** The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless the movement can be made in safety and without interfering with other traffic.
- F. **TURNING ON CURVE OR CREST OF GRADE PROHIBITED.** No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within one thousand feet (1000').
- G. **STARTING PARKED VEHICLE.**
1. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made only with reasonable safety.
 2. No person shall move any parked vehicle without giving appropriate signals as prescribed in § 12-6-5-H through § 12-6-5-J.
- H. **TURNING AND STOPPING MOVEMENTS AND REQUIRED SIGNALS.**
1. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the street as required in § 12-6-5-A or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a street unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.
 2. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before turning.
 3. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
 4. The signals provided for in this Section shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not be flashed on one side only on a parked or disabled car or flashing as a Courtesy or "do pass" signal to operators of other vehicles approaching from the rear.
- I. **SIGNALS BY HAND, AN ARM OR SIGNAL DEVICE.**
1. Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device except as otherwise provided in Subsection 2.
 2. Any motor vehicle in use on a street shall be equipped with, and required signal shall be

given by, a signal lamp or lamps or mechanical signal device he left when the distance from the center of the body, cab or load of such motor vehicle exceeds twenty-four inches (24"), or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet (14'). The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

J. METHOD OF GIVING HAND AND ARM SIGNALS. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signal shall indicate as follows:

1. Left turn: hand and arm extended horizontally;
2. Right turn: hand and arm extended upward; and
3. Stop or decrease speed: hand and arm extended downward.

12-6-6. STOPPING, STANDING AND PARKING.

A. STOPPING STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES.

1. No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a Law Enforcement Officer or traffic-control device, in any of the following places:
 - a. On a sidewalk;
 - b. In front of a public or private driveway;
 - c. Within an intersection;
 - d. Within fifteen feet (15') of a fire hydrant;
 - e. On a crosswalk;
 - f. Within twenty feet (20') of a crosswalk at an intersection;
 - g. Within thirty feet (30') upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a street;
 - h. Between a safety zone and the adjacent curb or within thirty feet (30') of points on the curb immediately opposite the end of safety zone, unless the traffic authority indicates a different length by signs or markings;
 - i. Within fifty feet (50') of the nearest rail of a railroad crossing;
 - j. Within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75') of said entrance, when properly is posted;
 - k. Alongside or opposite any excavation obstruction when stopping, standing, or parking, would obstruct traffic;
 - l. On the street side of any vehicle stopped or parked at the edge or curb of a street;
 - m. Upon any bridge or other elevated structure upon a street or within a street tunnel;
 - n. At any place where official signs prohibit stopping; or
 - o. On any railroad track.
2. No person shall move a vehicle not lawfully under his control into any such prohibited area of away from a curb which distance as is unlawful.

3. The foregoing provisions may be modified by the Tribal President or his designated representative upon the basis of an engineering and traffic investigation study by the use of appropriate markings, signs or parking meters.
- B. **ADDITIONAL PARKING REGULATIONS.**
1. Except as otherwise provided in this chapter every vehicle stopped or parked upon a street where there are adjacent curbs shall be so stopped or parked with the right hand wheels of such vehicle parallel to and within eighteen inches (18") of the right-hand curb.
 2. Except when otherwise provided in this chapter, every vehicle stopped or parked on a one-way street shall be so stopped or parked parallel to the curb or edge of the street with its right hand wheels within eighteen inches (18") of the right hand curb or edge of the street or its left hand wheels within eighteen inches (18") of the left hand curb or edge of the street.
- C. **STOPPED OR PARKED VEHICLES NOT TO INTERFERE WITH OTHER TRAFFIC.** No motor vehicle shall be stopped, parked or left standing, whether attended or unattended, upon the traveled portion of any street outside of a business or residential district, when it is practicable to stop, park, or leave such vehicle off the traveled portion of the street. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the street, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear.
- D. **PARKING IN ALLEYS.** No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet (10') of the width of the alley for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.
- E. **PARKING FOR CERTAIN PURPOSES PROHIBITED.** No person shall park a vehicle on any street for the principal purpose of:
1. Displaying the vehicle for sale; or
 2. Washing, greasing or repairing the vehicle except repairs necessitated by an emergency.
- F. **PARKING ADJACENT TO SCHOOLS PROHIBITED.**
1. The Tribal President may erect signs indicating no parking on either or both sides of any street adjacent to any school property when parking would, in his opinion, interfere with traffic or create a hazardous situation.
 2. When official signs are erected indicating no parking on either side of a street adjacent to any school property as authorized in this Section, no person shall park a vehicle in any such designated place.
- G. **PARKING PROHIBITED ON NARROW STREETS.**
1. The Tribal President may erect signs indicating no parking on any street when the width of the street does not exceed twenty-four feet (24') or no parking upon one side of a street as indicated by such signs when the width of the street does not exceed thirty-two feet (32').
 2. When official signs prohibiting parking are erected on narrow streets as authorized in this Section, no person shall park a vehicle on any such street in violation of the sign.
- H. **STANDING OR PARKING ON ONE-WAY STREETS.**

1. The Tribal President may erect signs on the left hand side of any one-way street to prohibit the standing or parking of vehicles.
2. When such signs are in place, no person shall stand or park a vehicle on such left-hand side in violation of any such sign.

I. STANDING OR PARKING ON DIVIDED STREETS.

1. In the event a divided street includes two (2) or more segments for vehicular traffic, and traffic is restricted to one (1) direction on any such segment, no person shall stand or park a vehicle on the left hand side of the one way segment unless signs are erected to permit such standing or parking.
2. The Tribal President may determine where standing or parking may be permitted on the left hand side of any such one-way portion of a divided street and may erect signs giving notice thereof.

J. NO STOPPING, STANDING OR PARKING NEAR HAZARDOUS OR CONGESTED PLACES.

1. The Tribal President may determine and designate by proper signs, places at intervals not exceeding one hundred feet (100') in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.
2. When official signs are erected at hazardous or congested places as authorized in paragraph A, no person shall stop, stand or park a vehicle in any such designated place.

K. STOPPING, STANDING, OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS.

1. The provisions of this Section prohibiting the standing or parking of a vehicle shall apply to all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions with a Law Enforcement Officer or official traffic-control device.
2. The provisions of this Section imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing, or parking of vehicles in specified places or at specified times.
3. The Tribal President may impose restrictions or prohibitions on standing, stopping or parking and they shall apply as follows:
 - a. When signals are erected prohibiting parking at all times on certain streets, no person shall park a vehicle at any time upon any of the streets so designated;
 - b. When signs are erected in each block giving notice that stopping, standing or parking is prohibited during certain hours on certain streets, no person shall stop, stand or park a vehicle between the hours specified on the sign on any day, except Sundays and public holidays, within the district or on any of the streets so designated.
 - c. When signs are erected in each block giving notice that parking time is limited on certain streets, no person shall park a vehicle for longer than the time indicated on such signs between the hours of 8:00 a.m. and 6:00 p.m. of any day except Sundays and public holidays, within the district on any of the streets so designated.

4. Whenever by this or any other ordinance of this Reservation any parking time limit is imposed or parking is prohibited on designated streets, it is the duty of the Tribal President to erect appropriate signs giving notice of the restrictions or limitations.
5. No regulation authorized in this Section shall be effective unless signs giving notice of prohibiting or limitations are erected and in place at the time of any alleged offense.

L. ANGLE PARKING AND PERMITS FOR LOADING OR UNLOADING AT AN ANGLE TO THE CURB.

1. The Tribal President may determine upon what streets angle parking is permitted and shall mark or sign such streets.
 - a. Any designation of angle parking shall be made on the basis of engineering and traffic study and investigation;
 - b. The Tribal President may permit angle parking on any street, except that angle parking shall not be permitted on any federal-aid or state highway unless the State Highway Commission has determined by resolution or ordered entered in its minutes that the street is of sufficient width to permit angle parking without interfering with the free movement of traffic;
 - c. Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive on the left side of the street; and
 - d. On those streets which have been signed or marked by the Tribal President for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the street indicated by signs or markings.
2. The Tribal President may issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of the permit:
 - a. The permits may be issued either to the owner or lessee of real property to the owner of the vehicle and shall grant to the permit holder the privilege stated in the permit and authorized in this chapter; and
 - b. No Permittee or other person shall violate any of the special terms or conditions of a permit.

M. STOPPING, STANDING OR PARKING OUTSIDE OF BUSINESS OR RESIDENTIAL DISTRICTS.

1. Upon any street outside of a business or residential district no person shall stop, park, or leave standing a vehicle, whether attended or unattended, upon the paved or main-traveled part of the street when it is practicable to stop, park, or leave such vehicle off such part of said street, but in every event an unobstructed width of the street opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet (200') in each direction upon such street.
2. This Section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

12-6-7. SPECIAL STOPS REQUIRED.

- A. **EMERGING FROM ALLEY, BUILDING, DRIVEWAY OR PRIVATE ROAD.**
1. The driver of a vehicle within a business or residential district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the street shall yield the right-of-way to all vehicles approaching on said street.
 2. The driver of the vehicle about to enter or cross a street from a private road or driveway shall yield the right-of-way to all vehicles approaching on said street.
- B. **STOP WHEN TRAFFIC OBSTRUCTED.** No driver shall enter an intersection or a marked crosswalk unless there is a sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.
- C. **STOPPING FOR SCHOOL BUS.**
1. The driver of a vehicle upon approaching or overtaking from either direction any school bus which has stopped on the street, with special school bus signals in operation, for the purpose of receiving or discharging any school children, shall stop the vehicle at least ten feet (10') before reaching the school bus and shall not proceed until the special school bus signals are turned off, the school bus resumes in motion or until signaled by the driver to proceed.
 2. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches (8") in height.
 3. The driver of a vehicle upon a street with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access street and the school bus is stopped in a loading zone which is part of or adjacent to such street and where pedestrians are not permitted to cross the roadway.
- D. **OPERATION OF VEHICLE ON APPROACH OF AUTHORIZED EMERGENCY VEHICLE.**
1. Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet (1,500') to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in such position, until the authorized emergency vehicle has passed, except when otherwise directed by a Law Enforcement Officer.
 2. This Section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.
- E. **OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN.**
1. Whenever any person driving a vehicle approaching a railroad grade crossing under any of the circumstances stated in this Section, the driver of such vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:
 - a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of railroad train;

- b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
 - c. A railroad train approaching within approximately one thousand five hundred feet (500') of the street crossing emits a signal audible from such crossing, is an immediate hazard; or
 - d. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
2. No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

12-6-8. PASSENGER AND FREIGHT CURB LOADING ZONES.

- A. **AUTHORITY TO DESIGNATE CURB LOADING ZONES.** The Tribal President may determine the location of passenger and freight curb loading zones, and he shall place and maintain appropriate signs indicating the zones and stating the hours during which the provisions of §12-6-8-A through §12-6-8-D are applicable.
- B. **PERMITS FOR CURB LOADING ZONES.**
- 1. The Tribal President shall not designate or sign any curb loading zone upon special request of any person unless the person makes application for a permit for the zone and for two signs to indicate the ends of each zone.
 - 2. After the Tribal President has granted a permit and before signs and markings as may be necessary are installed, the applicant shall pay to the Tribal Treasurer a service fee of Twenty-five Dollars (\$25.00) per twenty-two foot (22') stall plus Twenty Five Cents (\$.25) per foot for additional space per year or fraction thereof.
 - 3. The Tribal President may impose conditions and general regulations for the use of the signs and for reimbursement of the Tribe for the value thereof in the event of loss or damage, and their return in the event of misuse or upon expiration of permit.
 - 4. Every permit shall expire at the end of each calendar year.
- C. **STOPPING, STANDING OR PARKING IN PASSENGER CURB LOADING ZONES.** No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to the curb loading zone are effective and then only for a period not to exceed three (3) minutes.
- D. **STOPPING, STANDING OR PARKING IN FREIGHT CURB LOADING ZONE.**
- 1. No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to freight curb loading zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty (30) minutes.
 - 2. The driver of a passenger vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter the zone.

12-6-9. PUBLIC CARRIER STOPS AND STANDS.

- A. **AUTHORITY TO DESIGNATE PUBLIC CARRIER STOPS AND STANDS.**

1. The Tribal President may establish bus stops, bus stands, taxicab stands or other passenger common-carrier motor vehicles on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public.
 2. Every designated bus stop, bus stand, taxicab stand or other stand shall be designated by appropriate signs.
- B. FEES AND PERMITS FOR PUBLIC CARRIER STOPS AND STANDS. The following fees shall be charged to each person, firm or corporation for the use of taxicab stands, and permits for the stands shall expire at the end of each calendar year:
1. One Hundred Dollars (\$100.00) per year or fraction thereof for each stand located within the central business district; and
 2. Twenty-five Dollars (\$25.00) per year or fraction thereof for each stand located in any area outside the central business district.
- C. STOPPING, STANDING AND PARKING OF BUSES AND TAXICABS REGULATED. The stopping, standing and parking of buses and taxicabs is regulated as follows:
1. The operator of a bus shall not stop the vehicle on any street at any place other than a bus stand so designated or provided in this chapter.
 2. The operator of a bus shall not stop the vehicle on any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in cases of emergency.
 3. The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of the vehicle not farther than eighteen inches (18") from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.
 4. The operator of a taxicab shall not stand or park the vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. This provision shall not prevent the operation of a taxicab as temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.
- D. RESTRICTED USE OF BUS AND TAXICAB STANDS.
1. No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed.
 2. However, the driver of a passenger vehicle may temporarily stop in a bus stop or taxicab stand for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

12-6-10. SCHOOL CROSSINGS.

- A. Crosswalks may be established over streets abutting a school or the grounds adjacent thereto, and all children crossing the streets shall be required to do so within the marked crosswalks. The Tribal President, with advice of the local school officials, shall establish and mark, or cause to be marked, these street crossings.
- B. Crosswalks over streets not abutting on school grounds may be established by the Tribal

President, with advice of the local school officials and after adequate assurance has been given that proper safety precautions, pursuant to regulations of the Tribal President, will be maintained at the crossings by the school authorities to enforce their use by children.

- C. At all school crossings except as provided in this Section, appropriate signs shall be provided as prescribed by the Tribal President, indicating the crossings and regulating traffic movement within the school zones.
- D. School crossings are not required to be specially posted when they are located:
 - 1. At a signalized intersection;
 - 2. At an intersection where traffic is controlled by a stop sign; or
 - 3. At a point where a pedestrian tunnel or overhead crossing is provided.

12-6-11. EXCESSIVE SIZE AND WEIGHT, SLOW-MOVING AND HAZARDOUS VEHICLES.

A. PERMIT FOR MOVING EXCESSIVE SIZE AND WEIGHT VEHICLES.

- 1. The Tribal President may, at his discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in §66-7-401 through §66-7-416 N.M.S.A. 1978 on any street under his jurisdiction. Except for the movement of mobile homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route or routes to be traversed, the type of load or loads to be transported and any other restrictions or conditions deemed necessary by the Tribal President. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection by any Law Enforcement Officer.
- 2. If the vehicle for which a permit is issued under this Section is a mobile home, the Tribal President shall have available in the office issuing the permit the following information:
 - a. The date the permit was issued;
 - b. The location being moved from;
 - c. The location being moved to;
 - d. The name and the owner of the mobile home; and
 - e. The identification and registration numbers of the mobile home.
- 3. Except as provided in Subsection 4 of this Section, if the movement of a mobile home originates off the Reservation, no permit shall be issued under Subsection 2 of this Section until the owner of the mobile home or his authorized agent obtains from the County Assessor or Treasurer of the county in which the mobile home movement originates a Certificate showing that either:
 - a. All property taxes which are due or to become due on the mobile home for the current tax year or any past tax years have been paid; or
 - b. No liability for property taxes on the mobile home exists for the current tax year or any past tax years.
- 4. The movement of a mobile home from the lot or business location of a mobile home

dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection 3 of this Section if the mobile home movement originates from the lot or business location of the dealer and was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a mobile home by a dealer or his authorized agent as a result of a sale or trade-in from a non-dealer owner is subject to the requirements of Subsection 3 of this Section whether the destination is the business location of a dealer or some other destination.

5. No permit or fee required under this Section is necessary for implements of husbandry, including farm tractors and farm trailers when not more than two such farm trailers are towed in tandem, being moved during daylight hours within a county or an adjacent county for a total distance, one way, of not more than fifty (50) miles on any highway:
 - a. Crossing property of the Tribe; or
 - b. Running between separate property of the Tribe. Any person responsible for the movement of implements of husbandry under the provisions of this Section shall comply with all safety precautions set forth in this chapter and in regulations of the State Highway Commission.

B. SLOW-MOVING VEHICLE IDENTIFICATION.

1. As used in this Section, "slow-moving vehicle" means any vehicle which is ordinarily moved, operated or driven at a speed less than twenty-five (25) miles an hour.
2. Each slow-moving vehicle moved, operated or driven on a highway which is open for vehicular travel shall display a slow-moving vehicle emblem or flashing amber light as required by §66-3-807 N.M.S.A. 1978.
3. Use of the emblem is confined to slow-moving vehicles, and its use on any other type of vehicle or on any stationary object is prohibited. This Section does not prohibit the use of slow-moving vehicle emblems.
4. No person shall sell, lease, rent or operate any slow-moving vehicle unless the slow moving vehicle is equipped with a slow-moving vehicle emblem.

C. ESCORT TO BE FURNISHED FOR MOVEMENT OF HAZARDOUS VEHICLES.

1. When, in the judgment of the Tribal President, the movement of any vehicle is deemed a hazard to traffic upon a street over which the vehicle is to travel, the granting of permission for the movement thereof may be conditioned upon a special escort accompanying the hazardous vehicle.
2. The special police car escort to safeguard traffic during the movement of the hazardous vehicle shall conform to the provision of § 66-7-314 N.M.S.A. 1978.

12-6-12. DRIVING REGULATIONS AND OFFENSES.

A. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

1. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within the Reservation.
2. Any person who operates a motor vehicle within the Reservation shall be deemed to have given consent, to a chemical test or tests of his breath or blood for the purpose of determining the alcohol content of his blood, if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or any drug.

3. A test of blood or breath shall be administered at the direction of a Law Enforcement Officer having reasonable grounds to believe the person to have been driving a motor vehicle within the Reservation while under the influence of intoxicating liquor.
4. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by § 12-6-12-A-2, and the test or tests designated by the Reservation Law Enforcement Officer may be administered.
5. Only the persons authorized shall withdraw blood from any person for the purpose of determining its alcoholic content. This limitation does not apply to the taking of samples of breath.
6. The person tested shall be given an opportunity to arrange for a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician, of his own choosing to perform a chemical test in addition to any test performed at the direction of a Law Enforcement Officer.
7. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the Law Enforcement Officer shall be made available to him as soon as it is available from the person performing the test.
8. The Law Enforcement Agency represented by the Law Enforcement Officer at whose direction the chemical test is performed shall pay for the chemical test.
9. If a person exercises his right under Subsection F to have a chemical test performed upon him by a person of his own choosing, then the cost of that test shall be paid by the Law Enforcement Agency represented by the Law Enforcement Officer at whose direction a chemical test was administered under Subsection A-2.
10. The results of a test performed pursuant to this chapter may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested fix driving a motor vehicle while under the influence of intoxicating liquor.
11. If the blood of the person tested contains:
 - a. Four one-hundredths of one percent or less by weight of alcohol, it shall be presumed that the person was not under the influence of intoxicating liquor;
 - b. More than four one-hundredths of one percent but less than one-eighth of one percent by weight of alcohol, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether or not the person was under the influence of intoxicating liquor; or
 - c. One-eighth of one percent or more by weight of alcohol, it shall be presumed that the person was under the influence of intoxicating liquor.
12. The percent by weight of alcohol shall be based on the grams of alcohol in one hundred cubic centimeters of blood.
13. The presumptions in Subsection A-11 of this Section do not limit the introduction of other competent evidence concerning whether or not a person was under the influence of intoxicating liquor.
14. If a person is convicted of driving a motor vehicle while under the influence of

intoxicating liquor, the Tribal Judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.

15. Nothing in this Section is intended to authorize any Law Enforcement Officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol test, except in the performance of his official duties and as otherwise authorized by law.
16. If a person under arrest for violation of an offense enumerated in this chapter refuses upon request of a Law Enforcement Officer to submit to chemical tests designated by the Law Enforcement Agency as provided in § 12-6-A-2 and 3, upon his finding in a Law Enforcement Officer's written Affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or likelihood of death of another person or persons, or there is probable cause to believe that the person has committed an offense while under the influence of alcohol or a controlled substance and that chemical tests as provided in § 12-6-12-A-2 and 3 will produce material evidence in a prosecution.

B. PERSONS UNDER THE INFLUENCE OF DRUGS.

1. It is unlawful for any person who is a habitual user of, or under the influence of, any narcotic drug, or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle, to drive or be in actual physical control of any vehicle within the Reservation.
2. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this Reservation is not a defense against the charge.

C. RECKLESS DRIVING.

1. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights, safety of others, and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.
2. Any person arrested under this subsection may be found guilty of the lesser included offense of careless driving.

D. CARELESS DRIVING.

1. Any person operating a vehicle on the street shall give his full time and entire attention to the operation of a vehicle.
2. Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of careless driving.

E. OPERATORS AND CHAUFFEURS MUST BE LICENSED.

1. Except those expressly exempted by § 66-5-4 N.M.S.A. 1978, no person shall drive any motor vehicle upon a street in the Reservation unless he holds a valid license issued under the provisions of the New Mexico Vehicle Code or applicable Tribal Ordinance.
2. Any person licensed under the provisions of the New Mexico Motor Vehicle Code, or applicable Tribal Ordinance or expressly exempted from licensure, may exercise the privilege granted upon all streets and highways on this Reservation.
3. No person, whether a resident or non-resident of the Reservation shall operate a motor vehicle upon a street on this Reservation in violation of any restrictions with respect to

the type of, or special mechanical devices required on, a motor vehicle which the licensee may operate or any other restrictions applicable to the licensee.

4. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of a judge or Law Enforcement Officer. However, no person charged with violating this Section shall be convicted if he produces in Court a driver's license theretofore issued to him and valid at the time of his arrest.

F. UNLAWFUL USE OF LICENSE. No person shall:

1. Display or cause to permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;
2. Lend his driver's license to permit to any other person or knowingly permit the use thereof by another;
3. Display or represent as one's own any driver's license or permit not issued to him;
4. Fail or refuse to surrender to the Court upon its lawful demand any driver's license or permit which has been suspended, revoked or canceled;
5. Permit any unlawful use of driver's license or permit issued to him;
6. Drive a motor vehicle on the streets of this Reservation at a time when his privilege to do so is suspended, revoked or denied.

G. FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER. No driver of a motor vehicle shall willfully fail or refuse to bring his vehicle to a stop, or otherwise flee or attempt to elude a pursuing Law Enforcement vehicle, when given visual or audible signal to bring the vehicle to a stop.

1. The signal given by the Law Enforcement Officer may be by hand, voice or emergency light or siren.
2. The officer giving the signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official Law Enforcement vehicle.

H. UNATTENDED MOTOR VEHICLE. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake, or placing the transmission in parking position, thereon and, when standing upon any grade, turning the front wheels in such manner that the vehicle will be held by the curb or will leave the street if the brake fails.

I. LIMITATIONS ON BACKING.

1. The driver of a vehicle shall not back it:
 - a. Unless the movement can be made with reasonable safety and without interfering with other traffic;
 - b. Upon any shoulder or roadway of any controlled-access street, or upon the exit or entry road of any controlled-access street;
 - c. Into an intersection or around a corner unless preceded by an observer to safely direct the movement; and
 - d. From a private driveway or any street unless the movement can be made with safety and without interfering with other traffic on the street.

2. In no case shall a vehicle be backed more than sixty feet (60') unless preceded by an observer to safely direct the movement.
- J. OBSTRUCTION TO DRIVER'S VIEW OR DRIVING MECHANISM.
1. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
 2. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.
- K. COASTING PROHIBITED. The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.
- L. FOLLOWING FIRE APPARATUS PROHIBITED. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet (500'), or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.
- M. DRIVING THROUGH SAFETY ZONES PROHIBITED. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.
- N. VEHICLES THROUGH SAFETY ZONES PROHIBITED. No vehicle shall at any time be driven through or within a safety zone.
- O. VEHICLES SHALL BE DRIVEN ONLY ON STREETS, PRIVATE ROADS AND DRIVEWAYS. No driver of a vehicle shall operate or be in control of a vehicle other than the portions of streets improved, designed and ordinarily used for vehicular traffic, private roads, driveways, or alleys on the Reservation, except as otherwise permitted by this chapter or as otherwise authorized or designated by the Tribal President or his designated representative.
- P. DRIVING ON SIDEWALK AND PRIVATE PROPERTY.
1. No person shall drive any vehicle on, or across a sidewalk or sidewalk area except upon a permanent, or duly authorized temporary, driveway.
 2. No person shall drive on private property, except upon a permanent or authorized temporary driveway or parking area, without the express authorization of the owner, assigned lessee, or other person authorized by the owner to control the use of the private property.
- Q. PROHIBITED ACTIVITIES WHILE DRIVING. No person shall:
1. Drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;
 2. Drive while having in his lap any person, adult or minor, or any animal;
 3. Drive while seated in the lap of another person while the vehicle is in motion;
 4. Drive a vehicle while having either arm around another person; or
 5. Operate a motor vehicle's equipment, including but not limited to the vehicle horn or lights, in such manner as to distract other motorists on the public way or in such a manner as to disturb the peace.

R. RACING ON STREETS.

1. Unless written permission setting out pertinent conditions is obtained from the President or the chief Reservation Law Enforcement Officer and then only in accordance with such conditions, no person shall drive a vehicle on a street in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law, and no person shall in any manner participate in any such race, drag race competition, contest, test or exhibition.
2. As used in this Section:
 - a. "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speed in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit; and
 - b. "Race" means the use of one (1) or more vehicles in a manner to out-gain or outdistance another vehicle, prevent another vehicle from passing, arrive at a given destination ahead of another vehicle or test the physical stamina or endurance of drivers over long-distance routes.

S. PROCESSIONS.

1. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while the procession is in motion and when the vehicles in the procession are conspicuously designated as required in this Section. This provision shall not apply at intersections where traffic is controlled by Law Enforcement Officers.
2. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the street as practicable and shall follow the vehicle ahead as closely as is practicable and safe.
3. A funeral composed of a procession shall be identified by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the Administrator.
4. No funeral procession or parade containing two hundred (200) or more persons or fifty (50) or more vehicles, except the Armed Forces of the United States, the military forces of the State of New Mexico and the forces of the Reservation and Law Enforcement Agency, shall occupy, march or proceed along any street except in accordance with a permit issued by the President or the Chief Reservation Law Enforcement Officer and such other regulations as are set forth herein which may apply.

T. DRIVER TO TAKE PRECAUTIONS APPROACHING THE BLIND.

1. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color, with or without a red tip, or using a guide dog shall take all necessary precautions to avoid injury to the blind pedestrian. Any driver who fails to take necessary precautions shall be liable in damages for any injury caused to the pedestrian.
2. A totally blind or partially blind pedestrian not carrying a cane or using a guide dog shall have all the rights and privileges conferred by law on other persons, and the failure of a totally blind pedestrian to carry a cane or to use a guide dog shall not be held to constitute

nor be evidenced or contributory negligence.

- U. OFFENSES BY PERSONS OWNING OR CONTROLLING VEHICLES. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or to permit the operation of such vehicle upon a street on the Reservation in any manner contrary to this Traffic Code.
- V. PERMITTING UNAUTHORIZED PERSONS TO DRIVE.
 - 1. No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any street when such minor is not authorized under this chapter or New Mexico law or is in violation of any of the provisions of this Traffic Code.
 - 2. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street by any person who is not authorized under this Traffic Code or New Mexico law or is in violation of any of the provisions of this Traffic Code.
- W. PARTIES TO UNLAWFUL ACTS. Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be unlawful, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this chapter is likewise guilty of such offense.

12-6-13. MISCELLANEOUS TRAFFIC REGULATIONS.

- A. RIDING WITH INTOXICATED DRIVER OR PERSON UNDER INFLUENCE OF DRUGS.
 - 1. No person knowingly and willfully shall ride with an intoxicated person who is operating a vehicle.
 - 2. No owner or person in control of a motor vehicle shall permit it to be driven or operated by any person who is a habitual user of narcotic drugs or by any person who is under the influence of intoxicating liquor, narcotic drugs or any other drug to a degree which renders him incapable of safely driving the vehicle.
 - 3. No person under the influence of intoxicating liquor, narcotic drug or other drug to a degree which renders him incapable of driving safely shall start or attempt to operate a vehicle.
 - 4. No person shall drink any intoxicating liquor while in a motor vehicle on any street.
- B. UNLAWFUL RIDING.
 - 1. No person shall ride or permit another to ride in or on any portion of a vehicle not designated or intended for the use of passengers.
 - 2. This provision shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.
- C. UNHITCHED TRAILER ON STREET. No person shall leave any type of trailer unhitched upon a street.
- D. MOVING OR MOLESTING UNATTENDED VEHICLES.
 - 1. No person shall individually or in association with one or more others do any of the following:

- a. Purposely, and without authority from the owner, start or cause to be started the engine of any motor vehicle;
 - b. Purposely and maliciously shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle;
 - c. Purposely scratch or damage the chassis, running gear, body, sides, top covering or upholstery of a motor vehicle which is the property of another;
 - d. Purposely destroy any part of a motor vehicle or purposely cut, mash, mark, or in any other way, destroy or damage any part, attachment, fastening, or appurtenance of a motor vehicle, without the permission of the owner;
 - e. Purposely drain or start the drainage of any radiator, oil tank, or gas tank upon a motor vehicle, without the permission of the owner;
 - f. Purposely put any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage the same or impede the working of the machinery thereof;
 - g. Maliciously tighten or loosen any bracket, bolt, wire, nut, screw, or other fastening on a motor vehicle; or
 - h. Purposely release the brake upon a standing motor vehicle with the intent to injure said machine.
2. The foregoing provisions shall not apply to a Law Enforcement Officer or member of the fire department or street maintenance department who in discharge of his duty legally moves or causes to be moved any unattended vehicle, nor to any person who moves the vehicle at the direction of or in compliance with orders from a Law Enforcement Officer or member of the fire department or street maintenance department who is in discharge of his duties legally orders or directs the moving of the unattended vehicle.

E. DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY.

1. No person shall throw or deposit upon any street any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street.
2. Any person who drops, or permits to be dropped or thrown, upon any street any destructive or injurious material shall immediately remove the same or cause it to be moved.
3. Any person removing a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle.
4. No vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a street in cleaning or maintaining such street.
5. No person shall operate on any street any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the street.

- F. TRAINS AND BUSES NOT TO OBSTRUCT STREETS. No person or corporation shall direct the operation of or operate any railroad train or bus in such manner to prevent the use of any street for purposes of travel for a period of time longer than five (5) minutes.
- G. BOARDING OR ALIGHTING FROM VEHICLES.
1. No person shall board or alight from any moving vehicle or any vehicle which is stopped in traffic.
 2. No person shall alight or enter a vehicle except when it is stopped at a curb or in a passenger loading zone.
- H. IMPROPER OPENING OF DOORS. No person shall:
1. Open the door of a vehicle on the side near moving traffic unless it is reasonably safe to do so, and the door can be opened without interfering with the movement of traffic; or
 2. Leave a door of a vehicle open on the side of the vehicle near moving traffic for a period of time longer than necessary to load or unload passengers.
- I. OCCUPIED MOVING HOUSE TRAILER. No person shall:
1. Occupy a house trailer while it is being towed upon a street;
 2. Tow a house trailer on any street when the house trailer is occupied by any person.
- J. ANIMALS ON THE STREET.
1. It is unlawful for any person, during the hours of darkness, to ride a horse or other animal upon the traveled portion of any street which is normally used by motor vehicles.
 2. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced street at any time or, during the hours of darkness, to drive livestock along or upon any street which is normally used by a motor vehicle.
 3. Owners of livestock ranging in pastures through which unfenced roadways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using said roadways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing his animals to range in said pasture.
- K. MINORS - ALCOHOL LIQUOR - POSSESSION WHILE OPERATING A MOTOR VEHICLE.
1. No person under the age of twenty-one (21) years shall operate a motor vehicle upon a public street of the Reservation while knowingly and unlawfully having in his possession any alcoholic liquor.
 2. As used in § 12-6-13-K, "alcoholic liquor" means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one (1) or more of the foregoing containing more than one-half of one percent (.5%) alcohol, but excluding medicinal bitters.
 3. Upon determination that a person has violated the provisions of this Section, the Judge trying the case shall suspend the person's driver's license for a period of not less than one (1) day but for not more than any period of time which runs past the twenty-first (21st) birthday of such person.
- L. DRIVING ON MOUNTAIN STREETS. The driver of a motor vehicle traveling through defiles or canyons or on mountain streets shall hold such motor vehicle under control and as near the

right-hand edge of the street as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet (200') along the street, shall give audible warning with the horn of such motor vehicle.

12-6-14. PEDESTRIANS' RIGHTS AND DUTIES.

- A. PEDESTRIAN OBEDIENCE TO TRAFFIC-CONTROL DEVICES AND TRAFFIC REGULATIONS. Pedestrians shall be subject to traffic-control signals at intersections as provided in §12-5-6, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions provided in this chapter.
- B. PEDESTRIANS' RIGHT-OF-WAY IN CROSSWALKS.
1. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is upon the half of the street upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the street as to be in danger.
 2. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
 2. Subsection 1 shall not apply under the conditions stated in § 12-6-14-D.
 3. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.
- C. PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.
- D. CROSSING AT OTHER THAN CROSSWALKS.
1. Every pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the street.
 2. Any pedestrian crossing a street at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the street.
 3. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.
 4. No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.
- E. PEDESTRIANS ON STREETS.
1. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent street.
 2. Where sidewalks are not provided, any pedestrian walking along and upon a street shall, when practicable, walk only on the left side of the street or the shoulder facing traffic which may approach from the opposite direction.
- F. PEDESTRIANS SOLICITING RIDES OR BUSINESS.

1. No person shall stand in a street for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.
 2. No person shall stand on or in proximity to a street for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street.
- G. OBEDIENCE OF PEDESTRIANS TO BRIDGE AND RAILROAD SIGNALS.
1. No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.
 2. No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.
- H. DRIVERS TO EXERCISE DUE CARE. Notwithstanding the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any street and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a street.
- I. REFERENCE TO VEHICLES UPON THE STREETS.
1. The provisions of Section 6 of this chapter relating to the operation of vehicles, refer exclusively to the operation of vehicles upon the streets or highways, except where a different place is specifically referred to in a given Section.
 2. The provisions of Section 4 of this chapter and § 12-6-12-A and § 12-6-12-C of this chapter shall apply upon the streets and highways and elsewhere throughout the Reservation.

SECTION 7. SPECIAL RULES FOR MOTORCYCLES.

12-7-1. TRAFFIC REGULATIONS APPLY TO PERSONS OPERATING MOTORCYCLES. Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in § 12-7-1 which by their nature can have no application.

12-7-2. OPERATING MOTORCYCLES ON STREETS LANED FOR TRAFFIC.

- A. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This Section shall not apply to motorcycles operated two abreast in a single lane.
- B. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken, except that this provision shall not apply to Law Enforcement Officers in the performance of their official duties.
- C. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles, except that this provision shall not apply to Law Enforcement Officers in the performance of their official duties.
- D. Motorcycles shall not be operated more than two abreast in a single lane.

12-7-3. CLINGING TO OTHER VEHICLES. No person riding on a motorcycle shall attach himself or the motorcycle to any other vehicle on a street.

12-7-4. RIDING ON MOTORCYCLES.

- A. A person operating a motorcycle, motor scooter, or motor driven cycle shall ride upon the permanent and regular seat attached thereto, and shall have his feet upon the footrests provided on

the machine.

- B. The operator shall not carry any other person nor shall any other person ride on a motorcycle, motor scooter or motor-driven cycle unless it is designed to carry more than one person. If a motorcycle, motor scooter or motor-driven cycle is designed to carry more than one person, the passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the motorcycle, motor scooter or motor-driven cycle. The passenger shall have his feet upon the footrests attached for passenger use.
- C. No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.
- D. No operator of a motorcycle shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

12-7-5. EYE-PROTECTIVE DEVICES OR WINDSHIELDS. Any person operating a motorcycle, motor scooter or motor driven cycle, not having a fixed windshield of a type approved by regulation of the Director, shall wear an eye-protective device which may be a face shield attached to a safety helmet, goggles or safety eyeglasses. All eye-protective devices or windshields shall be of a type approved by the Administrator, or by state law or regulation.

12-7-6. MANDATORY USE OF PROTECTIVE HELMET.

- A. No person under the age of eighteen (18) shall operate a motorcycle unless he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards authorized by state law or the Administrator. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of eighteen (18) unless the lessee or renter shows such person a valid operator's license or permit and possesses the safety equipment required of the operator of such motorcycle who is under the age of eighteen. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this Section, meeting the standards specified by the Director.
- B. Failure to wear a safety helmet as required in this Section shall not constitute contributory negligence.

12-7-7. FOOTRESTS AND HANDLEBARS.

- A. Any motorcycle carrying a passenger other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger.
- B. No motorcycle shall be equipped with handlebars which have an outer end raised more than fifteen inches (15") above the level of the seat normally occupied by the operator. The level of the seat shall be determined as being the top of the seat when the seat is fully depressed.

12-7-8. MOTORCYCLE MANEUVERABILITY.

- A. No motorcycle shall be equipped in a manner such that it is incapable of turning a ninety-degree (90o) angle within a circle having a radius of not more than fourteen feet (14'). Evidence of a motorcycle's being unable to turn a ninety degree angle within a circle having a radius of not more than fourteen feet (14') shall be prima facie evidence of an unsafe vehicle as described in § 12-10-1-A.
- B. For the purposes of this Section, a Law Enforcement Officer may require the driver of a motorcycle to demonstrate the ability of any motorcycle to be ridden as described in Subsection A of this Section. Failure or refusal of any operator to demonstrate the ability of any motorcycle being operated upon the highways shall be prima facie evidence of an unsafe vehicle as described in § 12-10-1-A.

12-7-9. OFF-HIGHWAY MOTORCYCLES.

A. OFF-HIGHWAY MOTORCYCLES-REGISTRATION AND DEFINITION.

1. Unless exempted from the provisions of the Tribal Off-Highway Motorcycle Act, no person shall operate a motorcycle which is to be operated or used exclusively off the streets or highways of the Reservation unless the motorcycle has been registered with the Administrator and the regulations of the division adopted pursuant thereto.
2. For the purposes of § 12-7-9 through § 12-7-9-F of this chapter "motorcycle" or "off-highway motorcycle" means any motorcycle operated or used exclusively off the streets or highways of the Reservation.

B. OPERATION OF OFF-HIGHWAY MOTORCYCLES ON STREETS OR HIGHWAYS.

1. No person shall operate an off-highway motorcycle on any limited access street at any time.
2. Off-Highway motorcycles may cross streets or highways if the crossings are made after coming to complete stop prior to entering the street. These motorcycles shall yield the right-of-way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. MOVEMENT OF OFF-HIGHWAY MOTORCYCLES ADJACENT TO STREETS. Off-Highway motorcycles issued a plate pursuant to § 66-3-1003C N.M.S.A. 1978 may be moved, by non-chemical means only, adjacent to a street, in a manner so as not to interfere with traffic upon the street, only for the purpose of gaining access to, or returning from areas designed for the operation of off-highway motorcycles, when no other route is available.

D. OPERATION OF OFF-HIGHWAY MOTORCYCLES ON PRIVATE LANDS. It is unlawful to operate an off-highway motorcycle on private lands except with the express permission of the owner or assignee of the lands.

E. ACCIDENTS AND ACCIDENT REPORTS. Any operator of an off-highway motorcycle involved in an accident resulting in injuries to, or the death of, any person, or resulting in damage to public or private property to the extent of fifty dollars (\$50.00) or more, shall immediately notify a Reservation Law Enforcement Officer of the accident and the facts relating to the accident.

F. ENFORCEMENT OF OFF-HIGHWAY MOTORCYCLE REGULATIONS. Every Reservation Law Enforcement Officer displaying his badge of office, has the authority to enforce the provisions of § 12-7-9-E of this chapter and may require the operator of any off-highway motorcycle to produce the Certificate of Registration and the personal identification of the operator, and may issue citations for violations of the provisions of § 12-7-9-A through § 12-7-9-E of this chapter.

12-7-10. MOPEDS-STANDARDS-OPERATOR REQUIREMENTS-APPLICATION OF MOTOR VEHICLE CODE.

- A. Mopeds shall comply with those motor vehicle safety standards deemed necessary and prescribed by the Administrator.
- B. Operators of mopeds shall have in their possession while operating a moped a valid operator's or restricted operator's license of any class issued to them.
- C. Except as provided in Subsections A and B of this Section, none of the provisions of this Motor Vehicle Code relating to motor vehicles or motor-driven cycles as defined in these codes shall

applied to a moped.

SECTION 8. OPERATION OF BICYCLES.

12-8-1. EFFECT OF REGULATIONS.

- A. The parent of any child and the guardian of any ward shall not authorize or permit any such child or ward to violate any of the provisions of this chapter.
- B. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

12-8-2. TRAFFIC CODE APPLIES TO PERSONS RIDING BICYCLES. Every person riding a bicycle upon a street shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle, except as to the special regulations within § 12-8-1 through § 12-8-2.

12-8-3. RIDING BICYCLES.

- A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached hereto.
- B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

12-8-4. CLINGING TO VEHICLES. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a street.

12-8-5. RIDING ON STREETS AND BICYCLE PATHS.

- A. Every person operating a bicycle upon a street shall ride as near to the right side of the street as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
- B. Persons riding bicycles upon a street shall not ride more than two (2) abreast except on paths or parts of streets set aside for the exclusive use of bicycles.

12-8-6. CARRYING ARTICLES. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebar.

12-8-7. LAMPS AND OTHER EQUIPMENT ON BICYCLES.

- A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet (500') to the front and with a red reflector on the rear of a tube provided by the division which shall be visible from all distances from fifty feet (50') to three hundred feet (300') to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet (500') to the rear may be used in addition to the red reflector.
- B. No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet (100') except that a bicycle shall not be equipped with, nor shall any person use upon a bicycle any siren or whistle.
- C. Every bicycle shall be equipped with a brake which will enable the operator to make the break wheels skid on dry, level or clean pavement.

12-8-8. OBEDIENCE TO TRAFFIC-CONTROL DEVICES.

- A. Any person operating a bicycle shall obey the instructions of official traffic-control devices applicable to vehicles, unless otherwise directed by Reservation Law Enforcement Officers.

- B. Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such persons dismounts from the bicycle to make any such turn, in which event the person shall then obey the regulations applicable to pedestrians.

12-8-9. PARKING. No person shall park a bicycle upon a street other than upon the street against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

12-8-10. SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

12-8-11. EMERGING FROM ALLEY, DRIVEWAY, PRIVATE ROAD OR BUILDING.

- A. The operator of a bicycle emerging from an alley, private road, driveway or building shall yield the right-of-way to all pedestrians on the sidewalk, or sidewalk area.
- B. Upon entering the street, the driver of a bicycle shall yield the right-of-way to all vehicles approaching on the street.

12-8-12. RIDING ON SIDEWALKS.

- A. No person shall ride a bicycle upon a sidewalk within a business district.
- B. No person shall ride a bicycle on any sidewalk or street when signs are posted prohibiting bicycles on the sidewalk or street.
- C. When signs are posted requiring bicycles to use sidewalks or paths adjacent to a street, no person shall ride a bicycle on the street adjacent to the sidewalks or paths.
- D. Whenever a person is riding a bicycle upon a sidewalk, the person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing a pedestrian.

SECTION 9. VEHICLE REGULATIONS.

12-9-1. EQUIPMENT.

A. SCOPE AND EFFECT OF REGULATIONS

- 1. It shall be an offense for any person to drive or move, or for the owner to cause or permit to be driven or moved, on any street, any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, or which does not contain those parts, or is not all times equipped with such lamps and other equipment in proper condition and adjustment, as is required by § 12-9-1-A through § 12-9-1-YY, or which is equipped in any manner that is in violation of such Sections, or for any person to do any act forbidden, or fail to perform any act required under such Sections.
- 2. Nothing contained in § 12-9-1-A through § 12-9-1-YY shall be construed to prohibit the use of additional parts and accessories on any vehicle which are not inconsistent with the provisions of such Sections.
- 3. The provisions of § 12-10-1-A through § 12-9-1-YY with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as herein made applicable.

B. VEHICLES TO BE IN SAFE CONDITION.

- 1. No person shall drive or move on any street any motor vehicle, trailer, semi-trailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this chapter, and said

vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the street.

2. Any Law Enforcement Officer may at any time when having reasonable cause to believe that any vehicle is unsafe, or not equipped as required by this chapter, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to inspection and test as may be appropriate and reasonable.

C. **WHEN LIGHTED LAMPS ARE REQUIRED.** Every vehicle upon a street within the Reservation at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street at a distance of five hundred feet (500') ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

D. **VISIBILITY DISTANCE AND MOUNTED HEIGHT OF LAMPS.**

1. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provision shall apply during the times stated in § 12-9-1-C in respect to a vehicle without load when upon a straight, level, unlighted street under normal atmospheric conditions unless a different time or condition is expressly stated.
2. Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

E. **HEAD LAMPS ON MOTOR VEHICLES.**

1. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.
2. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this chapter.
3. Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches (54") nor less than twenty inches (20") to be measured as set forth in § 12-9-1-D-2. The provisions of this paragraph shall apply only to new motor vehicles sold after July 1, 1953.
4. For the purpose of § 12-9-1-A through § 12-9-1-YY parking lamps shall not be used in lieu of head lamps.
5. No head light shall emit a glaring or dazzling light.

F. **DIMMING OF LIGHTS.**

1. Whenever a motor vehicle meets another motor vehicle on any street during nighttime when headlights are in use, the driver of the vehicle shall, when within five hundred feet (500') of the other vehicle, dim or tilt the beams of the headlights downward.
2. The driver of any motor vehicle in any business district at nighttime when headlights are required shall keep headlights dim.
3. Whenever the driver of a motor vehicle overtakes another vehicle proceeding in the same

direction or follows another vehicle proceeding in the same direction within two hundred feet (200') at nighttime when headlights are required, the driver shall dim or tilt the beam of the headlights downward.

G. TAIL LAMPS.

1. Every motor vehicle, trailer, semi-trailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet (500') to the rear; provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above mentioned vehicle, other than a truck tractor, registered in New Mexico and manufactured or assembled after July 1, 1953, shall be equipped with at least two (2) tail lamps mounted on the rear, which when lighted as herein required shall comply with the provisions of this Section.
2. Every tail lamp, upon every vehicle, shall be located at a height of not more than seventy-two inches (72") nor less than twenty inches (20").
3. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet (50') to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.
4. No tail lamp shall emit a glaring or dazzling light.

H. VEHICLES TO BE EQUIPPED WITH REFLECTORS.

1. Every new motor vehicle hereafter sold and operated upon a street, other than a truck tractor, shall carry on the rear, either as part of the tail lamps or separately, two red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one reflector, meeting the requirements of this Section.
2. Every such reflector shall be mounted on the vehicle at a height not less than twenty inches (20") nor more than sixty inches (60") measured as set forth in § 12-9-1-D-2, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet (300') to fifty feet (50') from such vehicle when directly in front of lawful upper beams of head lamps.

I. STOP LAMPS, SIGNAL LAMPS AND SIGNAL DEVICES.

1. From and after January 1, 1954, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, on the Reservation or for any person to drive such vehicle on the streets unless it is equipped with at least one stop lamp meeting the requirements of Subsection 3-a.
2. No person shall sell or offer for sale or operate on the streets any motor vehicle, trailer, semi-trailer or house trailer registered in New Mexico which was manufactured or assembled after January 1, 1954, unless it is equipped with mechanical or electric turn signals meeting the requirements of Subsection 3-b. This subsection shall not apply to any motorcycle or motor-driven cycle.
3. Any other vehicle, trailer, semi-trailer, and house trailer may be equipped and when required under this chapter shall be equipped with the following, signal lamps, or signal devices:
 - a. Stop lamp or stop lamps on the rear which shall emit a red, amber or yellow light

and which shall be actuated upon application of the service brakes and which may, but need not be incorporated with one or more other rear lamps; and

- b. Lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.
4. Every stop lamp shall be plainly visible and understandable from a distance of one hundred feet (100') to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet (100') both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.
5. All mechanical signal devices shall be self-illuminated when in use at the times mentioned in § 12-9-1-C. of this chapter.

J. MUFFLERS-PREVENTION OF NOISE-EMISSION CONTROL DEVICES.

1. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a street in the Reservation.
2. The muffler, emission control equipment or device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.
3. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution.

K. LAMP OR FLAG ON PROJECTING LOAD.

1. Whenever the load upon any vehicle extends to the rear four feet (4') or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in § 12-9-1-C hereof, a red light or lantern plainly visible from a distance of at least five hundred feet (500') to the sides and rear. The red light or lantern required under this Section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches (12") square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.
2. If any part of a vehicle, or any load thereon, or any mechanical device, whether a temporary or permanent part of the vehicle, extends beyond the front bumpers thereof the extreme front corners of such projection shall at the times specified in § 12-9-1-C be indicated by amber lights or lanterns visible from a distance of at least five hundred feet (500') to the sides and front.

L. WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS.

1. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rear-most window if the latter is used for driving visibility. The rear-most window is not necessary for driving visibility where outside rear-view mirrors are

attached to the vehicle.

2. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

M. PROHIBITING LUGS.

No person shall drive a tractor engine, tractor or vehicle with lugs on the wheels thereof over any paved street.

N. PERMISSION TO USE EMERGENCY EQUIPMENT ON OTHER THAN OFFICIAL VEHICLE.

No person shall operate a vehicle other than an official vehicle, equipped with any red lights mounted so as to project a beam in a forward direction, or a siren, unless written permission of the Chief Reservation Law Enforcement Officer or his designated representative is first obtained.

O. PROHIBITING METAL TIRES OR DRAGGING LOAD.

1. When the use thereof is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one-inch (1") thick above the edge of the flange of the entire periphery.
2. No person shall operate or move on any street any motor vehicle, trailer, or semi-trailer having any metal tire in contact with the street, except that for the purposes of this chapter a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.
3. No tire on a vehicle moved on a street shall have on its periphery any block, flange, cleat or spike or any other protuberance of any other material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street, and except also that it shall be permissible to use tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.
4. The Administrator may, in his discretion, issue special permits authorizing the operation upon a street of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a street would otherwise be prohibited under the provisions of this chapter.
5. No vehicle equipped with solid rubber or cushion tires shall be permitted upon any street of the Reservation without special permission first being granted by the Tribal President, and in no event may any such vehicle be operated at a speed in excess of that specified by law.
6. No person shall operate or move on any street any motor vehicle, trailer or semi-trailer from which any object or load scrapes along or over any paved surface.

P. BRAKES.

1. Brake equipment is required as follows:
 - a. Every motor vehicle, other than a motorcycle, when operated upon a street shall

be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels;

- b. Every motorcycle when operated upon a street, shall be equipped with at least two (2) brakes which may be operated by hand or foot;
- c. Every bus, truck, truck-tractor, road tractor, trailer and semi-trailer, and pole trailer shall be equipped with brakes on all wheels in contact with road surfaces except:
 - (1) Trailers, semi-trailers and pole trailers of a gross weight of less than three thousand (3000) pounds;
 - (2) Any vehicle being towed in a drive-away/tow-away operation; provided, the combination of vehicles is capable of complying with the performance requirements of Subsection 2 of this Section;
 - (3) Trucks, truck tractors and road tractors having three (3) or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two (2) steerable axles the wheels of one such axle need not be equipped with brakes;
 - (4) House-moving dollies subject to regulations adopted by the Secretary of Transportation under the Motor Vehicle Act; and
 - (5) Motor vehicles of the types named in this Section hereinabove, heretofore manufactured prior to July 1, 1963;
- d. Every house trailer of a gross weight in excess of three thousand (3000) pounds, registered in New Mexico shall be equipped with brakes on at least two (2) wheels in contact with road surfaces. Every house trailer of a gross weight of three thousand (3000) pounds or more, when operated upon a highway or street, shall be equipped with brakes adequate to control the movement of, and to stop and hold, such vehicle, and so designed as to be applied by the driver of the towing motor vehicle;
- e. Every bus, truck, road tractor or truck tractor shall be equipped with parking brakes capable of locking the rear driving wheels and adequate under any condition of loading to hold, to the limit of traction of such brake wheels, such vehicle or combination of vehicles to which such motor vehicle may be attached. The operating controls of such parking brakes shall be independent of the operating control of such service brakes;
- f. In any combination of motor-drawn vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed; and
- g. The brake shoes operating within or upon the drums on the vehicle wheels of any

motor vehicle may be used for both service and hand operation.

2. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road, free from loose material, upon application of the service brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 Miles per Hour	Deceleration in Feet per Second
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

3. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

P. HORNS AND WARNING DEVICES.

1. Every motor vehicle when operated upon a street shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet (200'), but no horn or warning device shall be used which does not produce a harmonious sound. The driver of a motor vehicle shall when reasonably necessary to ensure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a street.
2. No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell except as otherwise permitted in this Section.
3. It is permissible, but not required, that any commercial vehicle be equipped with a theft-alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
4. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet (500') and of a type approved by the division, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of any actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

Q. MIRRORS.

Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet (200') to the rear of such vehicle.

R. APPLICATION OF SUCCEEDING SECTIONS.

§ 12-9-1-T, § 12-9-1-U, § 12-9-1-AA, § 12-9-1-GG, § 12-9-1-HH shall apply in lieu of § 12-9-1-E, 1, 2, 3; § 12-9-1-G 1, 2, 3; and § 12-9-1-H as to passenger buses, trucks, truck tractors, road tractors, and such trailers, semi-trailers and pole trailers provided therein, when operated upon any street, and said vehicles shall be equipped as required. All lamp equipment required shall be lighted at the times mentioned in § 12-9-1-C of this chapter.

S. ADDITIONAL EQUIPMENT REQUIRED.

Every bus or truck less than eighty inches (80") in overall width shall be equipped as follows:

1. On the front: two (2) head lamps; and
2. On the rear: one (1) red tail lamp; one (1) red or amber stop lamp; two (2) red reflectors, one (1) at each side.

T. COLOR OF CLEARANCE LAMPS. SIDE-MARKER LAMPS AND REFLECTORS.

Every bus or truck eighty inches (80") or more in overall width shall be equipped as follows:

1. On the front: two (2) head lamps; two (2) amber clearance lamps, one (1) at each side;
2. On the rear: one (1) red tail lamp; one (1) red or amber stop lamp; two (2) red clearance lamps, one (1) at each side; two (2) red reflectors, one (1) at each side;
3. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up shall be white and amber; and
4. On each side: one (1) amber side-marker lamp, located at or near the front; one (1) red side-marker lamp, located at or near the rear; one (1) amber reflector, located at or near the front; one (1) red reflector, located at or near the rear.

U. LAMPS AND REFLECTORS-TRUCK TRACTORS AND ROAD TRACTORS.

Every truck tractor and road tractor shall be equipped as follows:

1. On the front: two (2) head lamps, two (2) amber clearance lamps, one (1) at each side; and
2. On the rear: one (1) red tail lamp; one (1) red or amber stop lamp; two (2) red clearance lamps, one (1) at each side; two (2) red reflectors, one (1) at each side; and
3. On each side: one (1) amber side-marker lamp, located at or near the front; one (1) red side-marker lamp, located at or near the rear; one (1) amber reflector, located at or near the front; one (1) red reflector, located at or near the rear.
4. Side-marker lamps may be in combination with clearance lamps and may use the same light source.

V. LAMPS AND REFLECTORS-SMALL SEMI-TRAILERS, HOUSE TRAILERS AND TRAILERS.

Every semi-trailer, house trailer or trailer less than eighty inches (80") in overall width shall be equipped as follows: on the rear-one (1) red tail lamp; two (2) reflectors, one (1) at each side; one (1) red or amber stop lamp, if the semi-trailer, house trailer or trailer obscures the stop lamp on the towing vehicle.

W. LAMPS AND REFLECTORS-POLE TRAILERS.

Every pole trailer shall be equipped as follows:

1. On the rear: one (1) red tail lamp, two (2) red reflectors, one (1) at each side, placed to indicate extreme width of the pole trailer; and
2. On each side, on the rearmost support for the load; one (1) combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers thirty feet (30') or more in overall length, an amber marker lamp on each side near the center.

X. LAMPS AND REFLECTORS-COMBINATIONS IN DRIVE-AWAY/TOW-AWAY OPERATIONS.

Combinations of motor vehicles, as enumerated in § 12-9-1-S of this chapter, engaged in drive-away tow-away operations shall be equipped as follows:

1. On the towing vehicle:
 - a. On the front: two (2) head lamps and two (2) amber clearance lamps, one (1) at each side;
 - b. On each side and near the front: one (1) amber side-marker lamp;
 - c. On the rear: one (1) red tail lamp; one (1) red or amber stop lamp; and
 - d. Provided, however, that vehicles of less than eighty inches (80") in width shall be equipped as provided in § 12-9-1-T of this chapter.
2. On the towed vehicle of a tow-bar combination, the towed vehicle of a single saddle-mounted combination and on the rearmost towed vehicle of a double saddle-mount combination and on the rearmost towed vehicle of a double saddle-mount combination:
 - a. On each side and near the rear: one (1) red side-marker lamp; and
 - b. On the rear: one (1) red tail lamp; two (2) red clearance lamps, one (1) at each side; one (1) red or amber stop lamp; two (2) red reflectors, one (1) at each side.
3. On the first saddle-mount of a double saddle-mount combination: on each side, and near the rear, one (1) amber side marker lamp.
4. Combinations of vehicles less than eighty inches (80") in width in drive-away/tow-away operations shall carry lamp and reflectors as required in § 12-9-1-T of this chapter.

Z. MOUNTING OF REFLECTORS, CLEARANCE LAMPS AND SIDE-MARKER LAMPS.

1. Reflectors required by § 12-9-1-T and § 12-9-1-U of this chapter shall be mounted upon the motor vehicle at a height of not less than twenty-four inches (24") nor more than sixty inches (60") above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the twenty-four inch (24") requirements impractical. They shall be so installed as to perform their function adequately and reliably and, except for temporary reflectors required for vehicles in drive-away/tow-away operations, all reflectors shall be permanently and securely mounted in workmanlike manner so as to provide the maximum of stability, and the minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors mounted on motor vehicles during the time they are in transit in any drive-away/tow-away operation must be firmly attached.

2. All reflectors on the rear and those nearest to the rear on the sides, except those referred to in Subsection 3 of this Section, shall reflect a red color; all other reflectors, except those referred to in Subsection 3 of this Section, shall reflect an amber color; provided that this requirement shall not be construed to prohibit the use of motor vehicles in combination if such motor vehicles are severally equipped with reflectors as required by § 12-9-1-T through § 12-9-1-Z of this chapter.
 3. Retroreflective surfaces, other than required reflectors, may be used, provided:
 - a. Designs do not resemble traffic control signs, lights or devices, except that straight edge stripping resembling a barricade pattern may be used;
 - b. Designs do not tend to distort the length or width of the motor vehicle;
 - c. Such surfaces shall be at least three inches (3") from any required lamp or reflector unless of the same color as such lamp or reflector;
 - d. No red color shall be used on the front of any motor vehicle; and
 - e. No provision of this subsection shall be so construed as to prohibit the use of retroreflective registration plates required by any state or local authorities.
- AA. CLEARANCE LAMPS TO INDICATE EXTREME WIDTH, HEIGHT AND LENGTH.
- Clearance lamps shall, so far as is practicable, be mounted as to indicate the extreme width, height, and length of the motor vehicle; except that clearance lamps on truck-tractors shall be so located as to indicate the extreme width of the truck-tractor cab.
- BB. SIDE-MARKER LAMPS COMBINED WITH CLEARANCE LAMPS.
- Side-marker lamps may be combined with clearance lamps and may use the same light source.
- CC. COMBINATION TAIL AND STOP LAMPS.
- Except as required by § 12-10-1-BB of this chapter tail lamps may be incorporated in the same housing with stop lamps so long as the requirements for each are fulfilled.
- DD. LIGHTING DEVICES TO BE ELECTRIC.
- Lighting devices shall be electric, except that red liquid burning lanterns may be used on the end of load in the nature of poles, pipes, and ladders projecting to the rear of the vehicle.
- EE. REQUIREMENTS FOR HEAD LAMPS AND AUXILIARY ROAD-LIGHTING LAMPS.
1. Head lamps and lamps or auxiliary road lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.
 2. Every bus, truck or truck-tractor shall be equipped with two (2) single-beam head lamps or supplemented by two (2) auxiliary single-beam head lamps furnishing, respectively, an upper and lower distribution of light, also selectable at the driver's will.
 3. Head lamps shall be constructed and installed so as to comply with the provisions of § 12-9-1-MM through § 12-9-1-OO of this chapter.
- FF. REQUIREMENTS FOR CLEARANCE, SIDE-MARKER AND OTHER LAMPS.
1. Except for temporary side-marker and clearance lamps on motor vehicles, as enumerated in state law, being transported in drive-away/tow-away operations, temporary electric lamps on projecting loads and temporary marker lamps on pole trailers, all lamps shall be permanently and securely mounted in workmanlike manner on a permanent part of the

motor vehicle. All clearance lamps and side-marker lamps must be firmly attached.

2. Clearance, side marker, tail and projecting load-marker lamps shall be so mounted as to be capable of being seen from a distance of at least five hundred feet (500') under clear atmospheric conditions during the time lamps are required to be lighted. The light from front clearance lamps shall be visible to the front and that from side-marker lamps to the side, that from rear clearance and tail lamps to the rear. This Section shall not be construed to apply to lamps which are obscured by another unit of a combination of vehicles.
3. Clearance, side-marker, tail and projecting-load marker lamps shall be constructed and installed so as to provide an adequate and reliable warning signal.

GG. OBSTRUCTED LIGHTS NOT REQUIRED.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination would be obscured by another vehicle of the combination; but, this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rear-most vehicle of any combination shall be lighted.

HH. LAMPS ON PARKED VEHICLES.

1. Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half-hour after sunset and half-hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet (500') upon such street or highway no lights need be displayed upon such parked vehicle.
2. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet (500') upon such highway, such vehicle so parked or stopped shall be equipped with one (1) or more lamps meeting the following requirements: at least one (1) lamp shall display a white or amber light visible from a distance of five hundred feet (500') to the front of the vehicle, and the location of said lamp or lamps shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this Section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.
3. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

II. LAMPS ON OTHER VEHICLES AND EQUIPMENT.

1. All vehicles, including animal-drawn vehicles, not specifically required by the provisions of this chapter to be equipped with lamps, shall at the times specified in § 12-9-1-C of this chapter be equipped with at least one (1) lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet (500') to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet (500') to the rear.
2. Every farm tractor not equipped with an electric lighting system shall at all times mentioned in § 12-9-1-C of this chapter be equipped with lamps or lanterns meeting the requirements of Subsection 1 above. Every farm tractor equipped with an electric lighting system shall at all times mentioned in § 12-9-1-C of this chapter display a red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of § 12-9-

1-G, § 12-9-1-MM and § 12-9-1-OO of this chapter.

3. All combinations of tractors and towed farm equipment shall, in addition to the lighting equipment required by Subsection 2 above, be equipped with a lamp or lamps displaying a white or amber light visible from a distance of five hundred feet (500') to the front and red light visible from a distance of five hundred feet (500') to the rear, and said lamp or lamps shall be installed or capable of being positioned so that visibility from the rear is not obstructed by the towed equipment on the side of the road used by other vehicles in passing combinations. And further, all such towed farm equipment shall be equipped with two (2) tail lamps displaying a red light visible from a distance of fifty feet (50') to five hundred feet (500') to the rear or two (2) red reflectors visible from a distance of fifty to five hundred feet (500') to the rear when illuminated by the upper beam of head lamps; and the location of such lamps or reflectors shall be such as to indicate as nearly as practicable the extreme left and right rear projections of said towed equipment on the street.

JJ. SPOT LAMPS AND AUXILIARY LAMPS.

1. Any motor vehicle may be equipped with not to exceed two (2) spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one (1) hundred feet (100') ahead of the vehicles; provided, however, that lighted spot lamps shall be turned off at least five hundred feet (500') from approaching motor vehicles.
2. Any motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front at a height not less than twelve inches (12") nor more than thirty inches (30") above the level surface upon which the vehicle stands and so aimed, when the vehicle is not loaded, that none of the high-intensity portion of the light to the left of the center of the vehicle shall, at a distance of twenty-five feet (25') ahead, project higher than a level of four (4") inches (4") below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams as specified in § 12-9-1-LL-2 of this chapter.
3. Any motor vehicle may be equipped with not to exceed one (1) auxiliary passing lamp mounted on the front at a height not less than twenty-four inches (24") nor more than forty-two (2) inches (42") above the level surface upon which the vehicle stands. The provisions of § 12-9-1-MM of this chapter shall apply to any combination of head lamps and auxiliary passing lamps.
4. Any motor vehicle may be equipped with not to exceed one (1) auxiliary driving lamp mounted on the front at a height not less than sixteen inches (16") nor more than forty-one (1) inches (41") above the level surface upon which the vehicle stands. Any lighted auxiliary driving lamp shall be turned off at least five hundred feet (500') from approaching motor vehicles. The provisions of § 12-9-1-MM of this chapter shall apply to any combination of head lamps and auxiliary driving lamp.

KK. ADDITIONAL LIGHTING EQUIPMENT

1. Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.
2. Any motor vehicle may be equipped with not more than one (1) running-board Courtesy lamp on each side thereof which shall emit a white or amber light without glare.
3. Any motor vehicle may be equipped with not more than two (2) back-up lamps either

separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

LL. **MULTIPLE BEAM ROAD LIGHTING EQUIPMENT.** Except as hereinafter provided, the head lamps or the auxiliary driving lamps or the auxiliary passing lamp, or combinations thereof, on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

1. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet (350') ahead for all conditions of loading.
2. There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one (1) hundred feet (100') ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.
3. Every new motor vehicle registered in New Mexico after July 1, 1953, which has multiple beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

MM. **USE OF MULTIPLE BEAM ROAD LIGHTING EQUIPMENT.** Whenever a motor vehicle is being operated on a street or shoulder adjacent thereto during the times specified in § 12-9-1-C of this chapter, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

1. Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet (500'), such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver.
2. The lowermost distribution of light specified in § 12-9-1-MM-2 of this chapter shall be deemed to avoid glare at all times, regardless of road contour and loading.
3. Whenever the driver of a vehicle overtakes another vehicle proceeding in the same direction and within two (2) hundred feet (200'), such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected through the rear window of the overtaken vehicle.

NN. **SINGLE BEAM ROAD LIGHTING EQUIPMENT.** Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1953, in lieu of multiple beam road lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet (25') ahead project higher than a level of five inches (5") below the level of the center of the lamp from which it comes, and in no case higher than forty-two (2) inches (42") above the level on which the vehicle stands at a distance of seventy-five feet (75') ahead.
2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two (2) hundred feet (200').

- OO. ALTERNATE ROAD LIGHTING EQUIPMENT. Any motor vehicle may be operated under the conditions specified in § 12-9-1-C of this chapter when equipped with the two (2) lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet (75') ahead in lieu of lamps required in § 12-9-1-MM or § 12-9-1-OO of this chapter provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles an hour.
- PP. NUMBER OF DRIVING LAMPS REQUIRED OR PERMITTED.
1. At all times specified in § 12-9-1-C of this chapter, at least two (2) lighted lamps shall be displayed, one (1) on each side of the front of every motor vehicle other than a motorcycle or motor driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.
 2. Whenever a motor vehicle equipped with head lamps as herein required is also equipped with an auxiliary lamp or spot lamps or any other lamp on the front thereof projecting a beam of intensity greater than three hundred (300) candle power, not more than a total of four (4) of any such lamps on the front of the vehicle shall be lighted at any one (1) time when upon a street.
- QQ. SPECIAL RESTRICTIONS ON LAMPS.
1. Lighted lamps or illuminating devices upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, which project a beam of light of an intensity greater than three hundred (300) candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the street on which the vehicle stands at a distance of more than seventy-five feet (75') from the vehicle.
 2. No person shall drive or move, upon any street, any vehicle or equipment with a lamp or device thereon displaying a red light visible from directly in front of the center of the vehicle or equipment. This Section does not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by the Tribal Motor Vehicle Code.
 3. Flashing lights are prohibited except as provided in Subsection 4 of this Section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating a turn.
 4. Tow vehicles standing on streets for the purpose of removing, and actually engaged in removing, disabled vehicles, and while engaged in towing any disabled vehicle, may display flashing lights. This shall not be construed as permitting the use of flashing lights by tow cars in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.
 5. Only fire department vehicles, Law Enforcement Agency vehicles, ambulances and school buses shall display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the Tribal Motor Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible.
- RR. LIGHTS ON SNOW REMOVAL EQUIPMENT. It shall be unlawful to operate any snow removal equipment on any street unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted by the State Highway Commission.
- SS. MEANING OF THE TERM "MOTOR VEHICLE" AS USED IN SECTIONS 12-9-1-UU THROUGH 12-9-1-YY OF THIS CHAPTER-UNATTENDED VEHICLES.

1. For the purposes of § 12-9-1-UU through § 12-9-1-YY of this chapter "motor vehicle" means every bus, truck, truck tractor, road tractor, and every driven vehicle in drive-away/tow-away operations, required by § 12-9-2 of this chapter to have emergency equipment thereon.
 2. No motor vehicle shall be left unattended until the parking brake has been securely set. All reasonable precautions shall be taken to prevent the movement of any vehicle left unattended.
- TT. **STOPPED VEHICLES NOT TO INTERFERE WITH OTHER TRAFFIC.** No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended, upon the traveled portion of any street outside of a business or residential district, when it is practicable to stop, park, or leave such vehicle off the traveled portion of the street. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the street, the driver shall make every effort to leave all possible width of the street opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear.
- UU. **EMERGENCY SIGNALS-DISABLED VEHICLE.** Whenever any motor vehicle is disabled upon the traveled portion of any street or the shoulder thereof, when lighted lamps are required, except where there is sufficient street lighting to make it clearly discernible to persons and vehicles on the street at a distance of five hundred feet (500'), the following requirements shall be observed:
1. The driver of such vehicle shall immediately place on the traveled portion of the street at the traffic side of the disabled vehicle, a lighted flare and a lighted red electric lantern, or a red emergency reflector.
 2. Except as provided in Subsections 3 and 4 of this Section, as soon thereafter as possible, but in any event within the burning period of the flare, the driver shall place three (3) liquid-burning flares or pot torches, or three (3) red emergency reflectors on the traveled portion of the street in the following order:
 - a. One (1) at a distance of approximately one (1) hundred feet (100') from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane.
 - b. One (1) at a distance of approximately one (1) hundred feet (100') from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane.
- VV. **NON-EMERGENCY SIGNALS-STOPPED OR PARKED VEHICLES.** Whenever for any cause other than disablement or necessary traffic stops, any motor vehicle is stopped upon the traveled portion of any street, or shoulder thereof, during the time lights are required, except where there is sufficient street lighting during the time lights are required, and except where there is sufficient street lighting to make clearly discernible persons and vehicles on the street at a distance of five hundred feet (500'), the following requirements shall be observed:
1. The driver of such vehicle shall immediately place on the traveled portion of the street at the traffic side of the vehicle, a lighted flare and a lighted red electric lantern, or a red emergency reflector.
 2. If the stop is to exceed ten (10) minutes, the driver shall place emergency signals as required and in the manner prescribed by § 12-9-1-UU of this chapter.
- WW. **EMERGENCY SIGNALS-FLAME PRODUCING.** No driver shall attach or permit any person to attach a lighted fuse or other flame producing emergency signal to any part of a motor vehicle.

XX. EMERGENCY SIGNALS-DANGEROUS CARGOES. No driver shall use or permit the use of any flame producing emergency signal for protecting any motor vehicle transporting explosives, any cargo tank motor vehicle used for the transportation of any flammable liquid or flammable compressed gas, whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel. In lieu thereof, red electric lanterns or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in § 12-9-1-VV of this chapter.

12-9-2. TRANSPORTING OR HANDLING EXPLOSIVES OR DANGEROUS ARTICLES.

- A. Any person operating any vehicle transporting any explosive or any other dangerous articles, as defined in the Tribal Motor Vehicle Code, as cargo upon a street shall comply with respect to marking of vehicles.
- B. No motor vehicle transporting any explosive or any other dangerous article shall be left unattended upon any street in any residential or business district except when the driver is engaged in the performance of normal operations incident to his duties as operator of the vehicle to which he is assigned, provided, however, the Chief of the Reservation Law Enforcement Agency may except any street in any business district from the operation of this subsection.
- C. Drivers of motor vehicles transporting explosives, inflammable liquids, or inflammable, noxious or toxic compressed gases in cargo tanks, shall avoid, so far as practicable, driving into or through congested streets, places where crowds are assembled and dangerous crossings. So far as practicable this shall be accomplished by pre-arrangement of routes.
- D. No blasting caps or other materials designed and used for detonation charges or explosives may be transported in or on a vehicle with any explosive.
- E. The Tribal President shall enforce such rules and regulations adopted and promulgated by the Director with respect to the transportation of compressed gases and corrosive liquids by tank vehicle upon the public streets.

12-9-3. REGULATING THE KINDS AND CLASSES OF TRAFFIC ON THE STREETS.

A. RESTRICTIONS UPON USE OF STREETS BY CERTAIN VEHICLES.

- 1. The Tribal President may determine and designate those heavily traveled streets upon which shall be prohibited the use of the street by motor-driven cycles, bicycles, horse-drawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof.
- 2. When signs are erected giving notice of the restrictions, no person shall disobey the restrictions stated on the signs.

B. MINIMUM VEHICLE SIZE.

- 1. It is unlawful to operate on the streets of the Reservation any motor vehicle:
 - a. With a wheelbase, between two (2) axles, of less than three feet seven inches (3'7");
 - b. Any motorcycle with less than a twenty-five inch (25") seat height measured from the ground to the lowest point on top of the seat cushion, without a rider.
- 2. For the purpose of this Section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles.

C. PROJECTING LOADS ON PASSENGER VEHICLES. No passenger-type vehicle, except a motorcycle, shall be operated on any street with any load carried thereon extending more than six inches (6") beyond the line of the fenders on the right side of the vehicle.

- D. SPECIAL PROJECTING LOAD LIMITS. The load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet (3') beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than seven feet (7') beyond the rear of the bed of or body of such vehicle.
- E. TRAILERS AND TOWED VEHICLES.
1. When one (1) vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby. When a combination of vehicles are engaged in transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axle of each vehicle insofar as possible.
 2. When one (1) vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches (12") square.
- F. WIDTH OF VEHICLES.
1. The total outside width of any vehicle or the load thereon shall not exceed eight feet (8'), except as otherwise provided in this Section.
 2. The maximum width from the outside of one (1) wheel and tire to the outside of the opposite wheel and tire shall not exceed eight feet six inches (8'6") where pneumatic tires are used, but in such event, the outside width of the body of such vehicle or the load thereon shall not exceed eight feet (8'), including weevil pin holders, hinges, clearance lights and safety devices, provided they shall not extend more than three inches (3") on either side of the body.
- G. HEIGHT AND LENGTH OF VEHICLES AND LOADS.
1. No vehicles, including any load thereon, shall exceed a height of thirteen feet six inches (13'6").
 2. No vehicle, including any load thereon, shall exceed a length of forty feet (40') extreme over-all dimension, exclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in Subsection 3U of this Section.
 3. No combination of vehicles coupled together shall consist of more than two (2) units, except that a truck tractor and semi-trailer will be permitted to pull one (1) trailer and, excepted further, that a truck equipped with a fifth wheel trailering device may pull two (2) units, provided that the middle unit shall be a travel or recreational trailer which shall be connected to the truck by the fifth wheel trailering device and the other a trailer which shall be at least one foot (1'), but not more than thirteen feet six inches (13'6") high, or more than eight feet (8') wide, and equipped with tail lights, signal lights and stop lights and provided further that the combined gross weight of the towed units shall not exceed the manufacturer's stated gross weight of the towing unit or seventy-five percent (75%) of the manufacturer's stated gross vehicle weight of the towing unit, whichever is greater, and that a double or triple saddle-mount, or fifth wheel of vehicles in transit by drive-away/tow-away methods will be permitted. However, any saddle-mount combination of vehicles must comply with the rules, regulations and standards of the United States Department of Transportation in regard to safety and no combination of vehicles, including any load thereon, shall exceed an over-all length of sixty-five feet (65') exclusive of the front and rear bumpers.
 4. Subsection 3 of this Section does not apply to vehicles and trailers operated by or under

contract for Reservation refuse systems or to farm trailers, implements of husbandry and fertilizer operated by or under contract to a farmer or rancher in his farming or ranching operations.

- H. **EXCEPTIONS ON SIZE, WEIGHT, AND LOAD.** The provisions of § 12-9-3-A through § 12-9-3-G of this chapter governing size, weight and load shall not apply to fire apparatus, road machinery engaged in street construction or maintenance or to implements of husbandry, including farm tractors, temporarily moved upon a street, or to a vehicle operated under the terms of a special permit issued as herein provided.

12-9-4. DISPLAY OF CURRENT VALID REGISTRATION PLATE.

- A. It is a violation of this chapter for any person to park upon a public street or public parking area of this Reservation any motor vehicle or trailer which does not display one (1) or more visible current valid registration plates as required by New Mexico.
- B. The registration plate shall be attached to the rear of the vehicle for which it is issued, however, the registration plate shall be attached to the front of a road tractor or truck tractor. The plate shall be securely fastened at all times, in a fixed horizontal position, at a height of not less than twelve inches (12") from the ground, measuring from the bottom of the plate. It shall be in a place and position so as to be clearly visible, and it shall be maintained free from foreign material and in a condition to be clearly legible.
- C. No vehicle, while being operated on the streets of the Reservation, shall have displayed thereon, either on the front or the rear thereof, any license plate, including tab or sticker, other than one (1) issued, or validated, for the current registration period, by the division or any other licensing authority having jurisdiction over the vehicle. No expired license plate, tab or sticker shall be displayed on such vehicle.
- D. Nothing contained herein shall be construed as prohibiting the use, on the front of the vehicle, of a promotional or advertising plate.
- E. Any Law Enforcement Officer may, discovering that the registration plate of any vehicle is illegible because of wear or damage or other cause, issue a citation to the owner or operator of the vehicle, which citation shall provide that such owner shall, within thirty (30) days from the date of the citation, apply for and obtain a duplicate or replacement plate from the Division.
- F. Any motor vehicle owner who has been issued a citation for an illegible registration plate and who fails to comply with the terms of the citation requiring the acquisition of a duplicate or replacement plate within thirty (30) days of the date of the citation is guilty of an offense.

12-9-6. EVIDENCE OF REGISTRATION TO BE SIGNED AND EXHIBITED ON DEMAND. Every owner, upon receipt of registration evidence, shall write his signature thereon in a space provided. Every such registration evidence or duplicates thereof validated by the division shall be exhibited upon demand of any Law Enforcement Officer.

SECTION 10. PENALTIES AND PROCEDURES ON ARREST.

12-10-1. CITATION ON ILLEGALLY PARKED VEHICLE. Whenever any motor vehicle without a driver is found parked, standing or stopped in violation of any of the restrictions imposed by this chapter, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user and shall conspicuously affix to the vehicle a traffic citation on a form provided by the Reservation Law Enforcement Agency for the driver to answer to the charge against him within five (5) days during the hours and at a place specified in the citation.

12-10-2. FAILURE TO COMPLY WITH TRAFFIC CITATION ATTACHED TO PARKED VEHICLE. If a violator of the restriction on stopping, standing or parking under the traffic laws or ordinance does not

appear in response to a traffic citation affixed to the motor vehicle within a period of five (5) days, the Traffic Violations Bureau or Clerk of the Tribal Court shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing him of the violation and warning him that in the event that the letter is disregarded for a period of five (5) days a Warrant of Arrest will be issued.

12-10-3. PRESUMPTION IN REFERENCE TO ILLEGAL PARKING.

- A. In any prosecution charging a violation of any Ordinance governing the standing or parking of a vehicle, proof that the particular vehicle described in the Complaint was parked in violation of the ordinance, together with proof that the defendant named in the Complaint was at the time of the parking a registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, for the time during which the violation occurred.
- B. The foregoing stated presumption shall apply only when the procedure as prescribed in § 12-10-1 and § 12-10-2 has been followed.

12-10-4. WHEN WARRANT TO BE ISSUED. In the event that any person fails to comply with a traffic citation given to the person or attached to a vehicle or fails to make appearance pursuant to a Summons directing an appearance in the Tribal Court, or if any person fails or refuses to deposit bail as required and within the time permitted by Ordinance, the Tribal Judge shall issue either a Summons or a Warrant for his arrest.

12-10-5. DISPOSITION OF TRAFFIC FINES AND FORFEITURES. All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this chapter shall be paid into the Tribal Treasury.

12-10-6. OFFICIAL MISCONDUCT. Failure, refusal or neglect on the part of any judicial, other officer or employee receiving or having custody of any fine or forfeiture, either before or after a deposit with the tribal treasury, shall constitute misconduct in office and shall be grounds for removal.

12-10-7. IMPOUNDING VEHICLES.

- A. Members of the Reservation Law Enforcement Agency are authorized to remove a vehicle from a street to the nearest garage or other place of safety or to a garage designated or maintained by the Reservation Law Enforcement Agency or otherwise maintained by the Tribe under the following circumstances:
 - 1. When a vehicle is left unattended in any place clearly marked and designated "no parking" or upon any bridge, causeway or viaduct, or in a tunnel where the vehicle constitutes an obstruction to traffic;
 - 2. When a vehicle upon a street is so disabled as to constitute an obstruction to traffic or when the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody and removal;
 - 3. When a vehicle is being driven upon the street and is not in proper condition to be driven;
 - 4. When a vehicle is left unattended upon a street and is parked illegally so as to constitute an obstruction or definite hazard to the normal movement of traffic;
 - 5. When the driver of a vehicle is taken into custody by the Reservation Law Enforcement Agency and the vehicle would thereby be left unattended upon a street; or
 - 6. When removal is necessary in the interest of public safety because of fire, flood, storm, or other emergency reason.
- B. Any costs incidental to removal and storage of a vehicle shall be assessed against the owner of the vehicle.

- C. The Law Enforcement Officer shall obtain a receipt from the garage to which the vehicle is delivered and the receipt shall indicate the date, hour and place and identification of the vehicle.
- D. Whenever an officer authorizes the removal of a vehicle and is able to ascertain the name and address of the owner thereof, he shall report immediately to the Reservation Law Enforcement Agency.
 - 1. The Reservation Law Enforcement Agency shall give notice in writing to the owner of the fact of the removal, the reasons therefor and the place to which the vehicle has been removed; and
 - 2. In the event the vehicle is stored in a public garage, the officer shall issue signed and dated instructions in writing to the garage specifically stating whether the vehicle is to be held for investigation or whether it may be released to the owner after all attendant charges have been paid by the owner.
- E. Whenever an officer removes a vehicle from a street under this chapter and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, in the event the vehicle is not returned to the owner within a period of three days, then the officer shall immediately send or cause to be sent a written report of the removal by mail to the State Division of Motor Vehicles, and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for the removal and the name of the garage or place where the vehicle is stored.
- F. Abandoned vehicles on private property:
 - 1. Any person upon whose property or whose possession is found an abandoned vehicle or motor vehicle, shall have authority to sell, retain, give away or dispose of the abandoned vehicle or motor vehicle to any person licensed by state law provided that he notifies the Reservation Law Enforcement Agency prior to such disposal and obtains from that Agency a written clearance stating that neither the agency's records nor the computerized records of the National Crime Information Center indicates that the vehicle or motor vehicle has been reported as stolen, and either:
 - a. The vehicle or motor vehicle in question, regardless of its age, is either totally wrecked or in such a state of disrepair that it is suitable only for dismantling purposes;
 - b. The vehicle or motor vehicle in question is at least eight (8) years of age or older; or
 - c. The vehicle in question has been placed in any storage or wrecker yard at the request of a Law Enforcement Agency or a property owner upon whose property the vehicle or motor vehicle was abandoned and has remained unclaimed in said yard for a period of thirty (30) days, in which case the owner of the storage yard may proceed to make a claim against the motor vehicle or vehicle as though it were abandoned. Any person wishing to obtain such vehicle may not charge more than fifty cents (\$.50) per day for storage unless he is licensed as a vehicle storage yard, and he must notify owners and lien-holders within thirty (30) days or lose all rights to claim such vehicle.
 - 2. Any vehicle which is less than eight (8) years of age or in such a state of repair that it will be placed back into service or which is not to be used for dismantling purposes, or which a property owner wishes to retain for his own use or to sell to anyone other than a licensed dismantler, said person shall proceed to make claim for such vehicle or motor

vehicle through a lien process and obtain a new Certificate of Title prior to disposal.

- G. If any vehicle that is about to be removed or is in the process of being removed from the street and the owner of the vehicle or his agent appears and claims the vehicle and agrees forthwith to remove it from the street, the vehicle shall be delivered to the owner or agent upon demand and upon furnishing satisfactory evidence of identity and ownership or agency;
1. If the owner or agent fails, refuses or neglects to forthwith remove the vehicle, the vehicle shall nevertheless be removed; and
 2. Removal by the owner or agent shall not relieve the offender from liability or any fine or penalty for the violation of any law or ordinance on account of which the vehicle was to be removed.
- H. When a driver, owner or person in charge of any vehicle has received a Notice to answer to a charge against him for violation of any parking provisions of this chapter and the driver, owner or person in charge of the vehicle has failed to appear and answer the charge, members of the Reservation Law Enforcement Agency or employees of the Reservation acting in their official capacity may temporarily and for a period of forty-eight (48) hours immobilize the vehicle when found upon a street by installing on or attaching to the vehicle a device designated to restrict the normal movement of the vehicle.
1. When the vehicle is so immobilized the member of the Reservation Law Enforcement Agency or employee of the Reservation installing or attaching the device shall conspicuously affix to the vehicle a Notice in writing, a form to be provided by the Chief of the Reservation Law Enforcement Agency advising the driver, owner or person in charge of the vehicle that the vehicle has been immobilized by the Tribe for violation of this chapter and also advising him of the provisions for release of the vehicle.
 2. No person shall remove the immobilizing device or move the vehicle before the device is released by the Reservation Law Enforcement Agency or the Tribal Court.
 3. Where the vehicle has been properly immobilized as provided in this Section, a fee of Ten Dollars (\$10.00) shall be charged by the Reservation Law Enforcement Agency or Clerk of the Tribal Court before releasing the vehicle.
 4. Parking restrictions, if any, otherwise applicable shall not apply while the vehicle is immobilized as provided in this Section.

12-10-8. LIABILITY FOR DAMAGE.

- A. The public highways on the Reservation are dedicated to the reasonable use thereof by the public.
- B. It shall be unlawful for any person to injure or damage any Reservation street or any bridge, culvert, sign, signpost, or structure, upon or used or constructed in connection with any public street for the protection thereof or for protection or regulation of traffic thereon by any unusual, improper, or unreasonable use thereof, or by the careless driving or use of any vehicle thereon, or by willful mutilation defacing or destruction thereof.
- C. It shall be considered unreasonable use of any bridge or structure to operate or conduct upon or over the same any vehicle, tractor or engine not in accordance with § 66-7-401 through § 66-7-416 N.M.S.A. 1978.
- D. It shall be considered unreasonable use of any improved roadway or street, to operate, drive or haul thereon any truck, tractor or engine in such manner or at times when the surface thereof is in a soft or plastic condition and the road or portion thereof has been closed pursuant to law, or by Order of the Tribal President.

- E. It shall be unlawful to erect or maintain any fence or any other structure across any street, highway or roadway without written permit from the authorities having control thereof.
- F. The operator and the owner of such vehicle, truck, tractor or engine from whom the driver or operator has permitted possession at the time thereof shall be jointly and severally liable for the actual damages caused by the operation, conducting or hauling thereof over any public highway, street, bridge, culvert or structure in violation of any provision of this chapter to be collected by suit brought in the name of the Tribe and such vehicle, truck, tractor or engine may be attached and held to satisfy any judgment for such damages.
- G. The proceeds of any such judgment shall be paid to the Treasurer of the Tribe and placed to the credit of the fund for the construction and improvement of roads and streets.

12-10-9. SUNDAY ACTIONS. Judicial proceedings under any provision of this chapter are valid when performed on Sunday, the same as on other days of the week.

12-10-10. TRIBAL COURT APPEARANCE. All Traffic Code violators who are members of the Mescalero Apache Tribe, or any individual who is a member of any federally recognized tribe, shall be cited by any Law Enforcement Officer or Tribal Conservation Officer, commissioned by the President of the Mescalero Apache Tribe, and shall be served and cited by warrants, citations and summons to appear in the Mescalero Apache Tribal Court.

- A. If a Mescalero Apache Reservation Law Enforcement Officer seizes or removes a driver's license from a tribal member, or an individual who is a member of a federally recognized tribe, the Law Enforcement Officer shall not forward the driver's license to the State of New Mexico
- B. All drivers' licenses removed or seized from a Mescalero Apache tribal member, or any individual who is a member of any federally recognized tribe, shall be turned over or deposited with the Mescalero Apache Tribal Court for the Court's consideration and further action consistent with the Tribal Code.

SECTION 11. EFFECT AND SHORT TITLE.

12-11-1. SHORT TITLE. This Chapter may be cited as the Mescalero Apache Reservation Traffic Code.

12-11-2. EFFECT OF HEADINGS. Headings contained in this chapter shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this chapter.

12-11-3. SAVINGS CLAUSE. If any part or parts of this chapter are held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining parts of this chapter.

12-11-4. ACT NOT RETROACTIVE. This Chapter does not have a retroactive effect and does not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the Traffic Code of the Reservation occurring prior to the effective date of this chapter.

SECTION 12. GENERAL PROVISIONS.

12-12-1. PENALTIES. The Tribal Court may assess penalties not to exceed imprisonment of one hundred eighty (180) days or fine not to exceed Five Hundred Dollars (\$500) plus Court costs, or both. The Court may furthermore suspend and revoke operator and chauffeur licenses and owner permits and registration for a period of time not to exceed two (2) years.

12-12-2. TRIBAL COUNCIL. The Tribal Council may set, determine, and post signs regulating the use of streets and roadways as well as minimum and maximum speeds on roadways in any areas except those roadways which are maintained by county and state authorities. The Tribal Council may further pass any ordinance needed to regulate flow of traffic and parking within the Mescalero Apache Reservation.

12-12-3. FUNDS COLLECTED. Unless otherwise provided, all funds collected as a result of penalties and fines occasioned by violation of this Traffic Code shall be turned over by the Tribal Court to the Disbursing Officer.

12-12-4. NUCLEAR WASTE. The transportation of nuclear waste across the Mescalero Apache Reservation is prohibited without specific written authority from the President of the Mescalero Apache Tribe or his duly authorized representative.

SECTION 13. LICENSES.

12-13-1. MOTORCYCLE LICENSES. The Tribal Court shall have the authority to issue a Permit to any person residing on the Mescalero Apache Reservation to operate a motorcycle, motorbike, or motor scooter or other vehicle in accordance with terms set forth in the Tribal Traffic Code, and providing said person successfully passes a written and operator's examination administered by the Reservation Law Enforcement Office. This Permit shall be good for a period of one (1) year from time of issuance and may be renewed annually thereafter. This Permit shall only be valid within the confines of the Mescalero Apache Reservation. No Reservation resident shall operate a motorcycle, motorbike, or motor scooter or similar type of vehicle within the confines of the Mescalero Apache Reservation between the hours of 10:00 p.m. and 6:00 a.m., except on U.S. Highway 70 and New Mexico State Highway 24.

12-13-2. EMERGENCY LICENSES. Tribal Court shall have the authority to issue a Permit to any person whose driver's license has been revoked or suspended or expired and for any other person to operate a motor vehicle within the confines of the Mescalero Apache Reservation in emergency situations concerning the health and welfare of his family. This Tribal Permit shall only be given when need is shown and there are no other drivers available. The B.I.A. police or Reservation Law Enforcement Officer, as the case may be, shall administer an examination to determine whether the applicant for said emergency Permit is capable of operating a vehicle and will forward the names of all qualified applicants when he has passed examinations. Said permits shall be for a period of time to be determined by the Court, but in no case shall it be longer than one (1) year. The Court will have the authority to revoke this license for any reason whatsoever.

SECTION 14. OFF-ROAD MOTORIZED VEHICLE USE

12-14-1. PURPOSE. The purpose of this Section is to regulate the off-road use of motorized vehicles to reduce the danger to individual Tribal members and the damage possibly caused by the off-road use of motorized vehicles to Tribal natural resources, infrastructure and property.

12-14-2. SCOPE. This Section shall apply to any person operating a motorized vehicle other than on properly designated roadways and driveways within the exterior boundaries of the Mescalero Apache Indian Reservation.

- A. **MOTORIZED VEHICLE.** For purposes of this section, any motorized vehicle used off-read or all-terrain.
- B. **OPERATOR.** The Person operating the motorized vehicle at the time of a violation of this Section.
- C. **OWNER.** The Person who retains title or otherwise maintains ownership or control of a motorized vehicle.

12-14-3. RESTRICTIONS ON USE. No person shall operate a motorized vehicle:

- A. Off-road, in any way so as to endanger the safety of him- or herself or another person or damage property of another or the natural resources of the Tribe.
- B. On any pathways, whether improved or un-improved, or on sidewalks or walking trails designed exclusively for pedestrian use;

- C. Off-road on the assignment of another Tribal member without such Tribal member's permission;
- D. To make an off-road crossing of a highway or other roadway, except when such use is authorized and where the crossing is done in the most direct manner practicable, if the crossing is made at a place where such crossing may be performed quickly and safely, and if the operator stops the motorized vehicle prior to crossing and yields the right of way to other vehicles using the highway; or
- E. In any streams or other bodies of water.

12-14-5. ENFORCEMENT. The Tribal Conservation Department shall be responsible for enforcement of this Section. For violations of this Ordinance, the Tribal Conservation Department shall issue a citation directing the individual to pay the find specified in the section below.

12-14-6. FINE. Any operator and/or owner of a motorized vehicle who shall violate this Section may be subject to a civil citation of Thirty Dollars (\$30.00).

12-14-7. FAILURE TO PAY FINE; CIVIL FORFEITURE.

- A. Any person who shall violate this Section shall be subject to civil forfeiture of the motorized vehicle or any other property on his or her person seized at the time of the violation.
- B. In the event that any person shall fail to comply with a citation within thirty (30) days of its issuance, or at the request of the Tribal Conservation Officer at the time of the offense, the Tribal Prosecutor shall commence civil forfeiture proceedings as described below and the Tribal Court shall issue a summons.
- C. After a hearing the Tribal Court, the motorized vehicle or other property may be sold to satisfy the party's fine, unless he or she has appealed the Tribal Court's decision, in which case the motorized vehicle or other property may be sold within thirty (30) days of a final determination.
- D. Upon sale, the Tribe shall be entitled to retain the reasonable costs associated with the storage, transportation and sale of the motorized vehicle or other property and the amount of any civil fines assessed. The remainder shall be remitted to the owner of the motorized vehicle or other property.

12-14-8. APPEAL. Any party aggrieved with the decision of the Mescalero Apache Tribal Court may appeal the decision of said court pursuant to the provisions of Section 2-4-3 of the Tribal Code.

12-14-9. EXCEPTIONS. This Section shall not apply to the B.I.A. Law Enforcement or Tribal agency official use of motorized vehicles during an emergency situation.

CHAPTER 13

ADMISSION, PRACTICE AND DISCIPLINE OF ATTORNEYS

SECTION 1. TRIBAL MEMBER REPRESENTATION.

13-1-1. LAY ADVOCATES. Except as provided herein, any enrolled member of the Mescalero Apache Tribe, over the age of eighteen (18), may represent any person in any criminal or civil matter before the Tribal Court as a lay advocate.

13-1-2. CRIMINAL CASES. A lay advocate shall be permitted to represent a criminal defendant only where such defendant has knowingly and voluntarily waived his or her right to an attorney.

SECTION 2. ATTORNEYS AT LAW.

13-2-1. ATTORNEYS. Professional attorneys may practice before the Tribal Court in criminal cases only, and where otherwise specified providing that they qualify, under the following provisions: Each attorney who wishes to practice before the Tribal Court must submit an Application to Practice to the Tribal President. Said Application shall be accompanied by Certificates from the clerks of the supreme court of any state and any federal or tribal court, certifying that said attorney is duly admitted to practice in those Courts and is in good standing before those Courts. The application shall be made under oath and shall contain the following information:

- A. The name and address of the attorney.
- B. The date of his or her admission to each and every court before which he or she is admitted to practice law.
- C. A statement that the attorney will comply with the Code of Professional Responsibility of the American Bar Association, insofar as it applies to representation in the Tribal Court, in all his or her appearances and in practicing before the Tribal Court, and in his or her dealing with clients.
- D. The attorney shall also consent to the rules of procedure of the Tribal Court and consent to the jurisdiction of the Tribal Court regarding admission, practice and discipline of attorneys appearing before the Tribal Court, as set forth in this Code and all amendments, rules and regulations enacted thereunder.
- E. A statement that the attorney will notify the Tribal Court immediately if he or she is suspended or disbarred from practicing in any federal, state or tribal court.
- F. The applicant shall submit an annual fee of Two Hundred Fifty Dollars (\$250.00) which will be refunded to the applicant if his Application is denied. Said fee shall be for the practice before the Tribal Court for the balance of the calendar year in which it is submitted. Thereafter annual fees shall be payable on January 1 of each ensuing year. In the event this fee is unpaid, the attorney shall not be considered in good standing and eligible to practice before the Tribal Court.

SECTION 3. CODE OF CONDUCT & DISCIPLINE

13-3-1. QUALIFICATIONS.

- A. Persons currently serving in the following capacities shall be prohibited from representing any party before the Court as a lay advocate or attorney: Tribal President, Tribal Vice-President, Tribal Council Member, any other elected position, Tribal Administrator, Tribal Court Judge and employee of the Tribal Court.
- B. Any former Tribal Court Judge or Court employee shall be prohibited from acting as a lay advocate or attorney in any case where he or she:
 1. Previously presided over such case; or

2. Has knowledge beyond that of the public of such case.

13-3-2. OATH OF LAY ADVOCATE OR ATTORNEY. Prior to being admitted to practice before the Tribal Court, each lay advocate or attorney will sign the following oath administered by a Tribal Judge:

I, _____, do solemnly swear:

I will support the Constitution of the United States and the Constitution, By-Laws, Ordinances and customs of the Mescalero Apache Tribe;

I will maintain the respect due to the Courts of Justice and to the Judicial Officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except those I believe to be honestly debatable under law;

I will keep confidences in a truthful and honest manner and will never seek to mislead the Judge or Jury by false statements or actions;

I will abstain from all offensive actions and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the cause of justice with which I am charged;

I will never reject the cause of the defenseless or oppressed, or delay any person's cause for profit or malice.

SO HELP ME.

Date

Signature

13-3-3. CAUSE FOR DISCIPLINARY ACTION. Any lay advocate or attorney who commits or is subject to any of the following acts may be subject to disciplinary action:

- A. Conviction for any of the following offenses:
 - 1. A felony; or
 - 2. Any other offense which may impair his or her ability to adequately and diligently represent his or her client(s) before the Tribal Court;
- B. Knowingly making a false statement of material fact to the Court;
- C. Disbarment or suspension by any federal, state or tribal court in which he or she is admitted to practice law may be subject to disciplinary action;
- D. Failure to safeguard and protect confidential client information; or
- E. Failure to competently and diligently represent the interests of his or her client(s).

13-3-4. COURTROOM DECORUM. In addition to those restrictions relating to courtroom decorum listed in Section 2-3-12 of the Tribal Code, each lay advocate and attorney shall:

- A. Be punctual;
- B. Attend each scheduled hearing or other proceeding;
- C. Not leave while Court is in session, unless the Court's permission to leave has been first obtained;
- D. Show respect for all individuals in the courtroom;
- E. Request permission before approaching the bench;
- F. Advise clients, witnesses and other interested persons concerning rules of decorum to be observed

in Court; and

- G. Rise when addressing or being addressed by the Court.

Any violation of this sub-Section may constitute cause for disciplinary action.

13-3-5. DISBARMENT OR SUSPENSION. Each lay advocate or attorney admitted to practice law before the Tribal Court may be permanently disbarred or suspended from practice for a stated period of time, as determined by a panel composed of the Chief Judge and the Associate Judges for any violation of this Section.

13-3-6. HEARING. Each lay advocate or attorney whom may be subject to disbarment or suspension shall have the right to a hearing.

- A. The Tribal Court shall provide at least five (5) days' notice of such hearing.
- B. In cases where the rights of any party before the Court or the safety or integrity of the Court is in jeopardy, the Court may issue an immediate temporary suspension pending the hearing for disbarment or suspension.

13-3-7. APPEAL OF DECISION TO DISBAR OR SUSPEND. Any lay advocate or attorney who has been disbarred or suspended may appeal such decision to the Mescalero Apache Tribal Supreme Court by filing an appeal within ten (10) days thereof.

- A. The lay advocate or attorney has the right to a hearing before the Supreme Court.
- B. The Supreme Court shall provide at least five (5) days' notice of such hearing.
- C. The decision of the Supreme Court shall be final.

13-3-8. ADDITIONAL DISCIPLINARY ACTIONS. Any individual Judge, at his or her discretion, shall have the authority to verbally censure, issue a written reprimand or hold any lay advocate or attorney in contempt of Court in addition to or in lieu of disbarment or suspension for any violation hereunder.

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CHAPTER 14

ALCOHOLIC BEVERAGES & TOBACCO PRODUCTS

SECTION 1. GENERAL.

14-1-1. SALE ALLOWED. The introduction, sale, and possession of intoxicating beverages shall be lawful within the exterior boundaries of the Mescalero Apache Indian reservation and within Indian Country; provided that such introduction, sale and possession is in conformity with law, and provided further that sale of intoxicating beverages within the exterior boundaries of the Mescalero Indian reservation or within Indian Country by any person other than the Mescalero Apache Tribe shall be pursuant to license issued by the Mescalero Apache Tribe and in accordance with this chapter.

SECTION 2. OFFENSES AND PENALTIES.

14-2-1. PAWN OR LOAN ARRANGEMENT. Any person engaged in the business of dispensing alcoholic beverages within the Mescalero Apache Reservation is prohibited from entering into any pawn or loan arrangement with any member of the Mescalero Apache Tribe, or any Indian tribe, within the exterior boundaries of the Mescalero Apache Reservation and all Indian Country located therein.

14-2-2. DRINKING IN PUBLIC PLACES, SELLING OR SERVING LIQUORS OTHER THAN IN LICENSED ESTABLISHMENTS. It shall be unlawful to drink or consume alcoholic liquors, or for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors on any grounds upon which traditional ceremonies of the Tribe are occurring, including parking areas, public restrooms, and fenced areas used in connection therewith, or in any public dance hall, pool room, bowling alley, street, state or federal building, or in any other public place or any public or private club, key club, or coffee house, whether operated for profit or not, except establishments having a license to dispense alcoholic liquors. It shall also be unlawful for any licensee to have any kind of "curb service" of alcoholic liquors except in unbroken packages, outside of the building on the premises at which licensee's business is operated, except to customers seated at tables.

14-2-3. SELLING OR GIVING LIQUOR TO MINORS, POSSESSION - MINOR DEFINED.

- A. It is a violation of this Chapter 14 for any club, retailer, dispenser, or any other person, except the parent or guardian or adult spouse of any minor, or adult person into whose custody any Court has committed the minor for the time, outside of the actual, visible personal presence of the minor's parent, guardian, adult spouse or the adult person into whose custody any Court has committed the minor for the time, to do any of the following acts:
1. To sell, serve or give any alcoholic liquor to a minor or to permit a minor to consume alcoholic liquor on the licensed premises;
 2. To buy alcoholic liquor for, or to procure the sale or service of alcoholic liquor to a minor;
 3. To deliver alcoholic liquor to a minor; or
 4. To aid or assist a minor to buy, procure or be served with alcoholic liquor.
- B. It is a violation of this chapter 14 for any minor to buy, attempt to buy, receive possess or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some Court, who is actually, visibly and personally present at the time the alcoholic liquor is brought or received by him or possessed by him or served or delivered to him.
- C. In the event any person except a minor procures any other person to sell, serve or deliver any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to

cause, or by the concealment of any facts the concealment of which is calculated to cause the person selling, serving or delivering the alcoholic liquors to the minor, to believe that such minor is legally entitled to be sold, served or delivered alcoholic liquors, and actually deceiving him by such misrepresentation or concealment, shall have violated this chapter 14.

- D. In any proceedings under Sub-Section A of this Section, it is not necessary for the prosecution, or any person, official or party urging or contending that such Sub-Section has been violated, to allege or prove that the parent, guardian, adult spouse or any adult person into whose custody any such minor has been committed by any Court, was not actually, visibly and personally present at the time of the alleged violation, but such matters are matters of defense to be established and proved by the person against whom the prosecution or proceedings is brought.
- E. As used in this chapter 14, minor means any person under twenty-one (21) years of age.

14-2-4. SALE TO DRUNKARDS AND MENTAL INCOMPETENTS. It shall be a violation of this Code for any person to sell, serve, give or deliver any alcoholic liquors to, or to procure or aid in the procurement of any alcoholic liquors for any inebriated person or person of unsound mind knowing that the person buying, receiving, or receiving service of such alcoholic liquors is an inebriated person or person of unsound mind.

14-2-5. LOITERING IN VICINITY OF LIQUOR DISPENSER. It shall be unlawful for any person, person under the influence of liquor, any minor, or person with minor children with them to loiter about the parking lot of a liquor establishment or the area within one-quarter (1/4) mile of such an establishment. Persons found guilty of violation of this section will be sentenced by the Tribal Court to a fine of not less than Twenty Dollars (\$20.00) or ten (10) days in jail or both such fine and imprisonment and a fine of not more than Fifty Dollars (\$50.00) or twenty-five (25) days in jail or both in habitual cases. Further, any person who shall be convicted of any of the crimes against the public peace codified in Chapter 10, Section 15 of this Code while in or near any tribal liquor establishment may be ordered to refrain from using such establishment for a period of time not to be less than thirty (30) days, nor more than six (6) months, as fixed by the Court.

14-2-6. SERVER OF ALCOHOLIC BEVERAGES.

DEFINITION. The term “server” shall refer to any person, whether a volunteer or employee of an establishment licensed to sell alcoholic beverages within the exterior boundaries of the Mescalero Apache Indian Reservation, whose duties include the bartending, serving, dispensing, furnishing, selling or handling of open containers of alcoholic beverages.

- B. AGE REQUIREMENT. No server shall be under the age of twenty-one (21).

14-2-7. PENALTIES. Except where otherwise specifically provided, any violation of this chapter 14 is punishable upon conviction by a sentence in the tribal jail for a period not to exceed one hundred eighty (180) days or by a fine not to exceed Five Hundred Dollars (\$500), or both.

SECTION 3. ALCOHOL ABUSE: COMMITMENT PROCEEDINGS.

14-3-1. PETITION. Any interested person may petition the Tribal Court for involuntary detoxification of a person residing on the Mescalero Apache Reservation on either an emergency or non-emergency basis.

14-3-2. EMERGENCY COMMITMENT.

- A. An intoxicated person may be committed to an approved public or private treatment facility for emergency treatment, who:
1. Has threatened, attempted or inflicted physical harm on himself or another;
 2. Is likely to inflict serious physical harm on himself; or
 3. Is likely to inflict serious physical harm on another unless committed; or

4. Is incapacitated by alcohol.

A refusal to undergo treatment does not constitute conclusive evidence of lack of judgment as to the need for treatment.

- B. The certifying physician, spouse, guardian or relative of the person to be committed, or any other responsible person, including a public employee or elected official, may make a written Application for Commitment under this Section, directed to the Administrator of the approved public or private treatment facility, or to the Tribal Court or Tribal Court Attorney where the proposed patient is in residence, or is present, who shall direct the Application to the Administrator of an approved public or private treatment facility. The Application shall state facts to support the need for emergency treatment, consistent with the least drastic means principle, and, unless a medical examination has been refused, shall be accompanied by a physician's certificate stating that he has examined the person sought to be committed within two (2) days before the Certificate's date, and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the Behavioral Health Services Division is not eligible to be the certifying physician.
- C. The treatment facility Administrator shall determine whether grounds for commitment exist, and shall approve or refuse the Application. No one shall be detained for more than five (5) days, unless a Petition for Involuntary Commitment under Subsection B below has been filed within the five (5) day period, and the Administrator also finds that grounds for emergency commitment still exist. In such case the person committed may be detained while determination of the Petition is pending, but no longer than (10) ten days after the filing of the Petition.

14-3-3. REGULAR COMMITMENT.

- A. Under this Subsection the Petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted or inflicted physical harm on himself or another and that unless committed is likely to inflict physical harm on himself or another; or that he is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The Petition shall be accompanied by a Certificate of a licensed physician, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the Petition. The Certificate shall set forth the physician's findings in support of the allegations of the Petition. Upon filing the Petition, the Court shall fix a date for a hearing no later than ten (10) days after the date the Petition was filed.
- B. At the hearing, the Court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the Court or his counsel believes that his presence is likely to be injurious to him or he is so incapacitated that he cannot understand the nature of the proceeding. The person may at their own expense be represented by counsel. The Court shall examine the person in open Court, or, if advisable, shall examine the person out of Court.
- C. If, after hearing all relevant evidence, including the results of any diagnostic examination by the treatment facility, the Court finds that grounds for involuntary commitment have been established by clear and convincing proof, it shall make an Order of Commitment to the treatment facility. A person so committed shall remain in the custody of a treatment facility approved by the President for a period of thirty (30) days unless sooner discharged.
- D. Extended commitment may be sought by any interested party, up to two (2) consecutive ninety (90) day periods by bringing a Petition for Recommitment. The grounds therefore shall be that conditions giving rise to the original commitment still exist to a significant degree. The Petition shall be filed ten or more days before the expiration of the applicable term. The hearing shall be

held before the term's expiration. The person committed shall not be discharged while a hearing to extend commitment is pending.

14-3-4. CUSTODY OF PERSON TO BE EXAMINED OR COMMITTED.

- A. If examination or a hearing to commit is deemed necessary by the Administrator or Judge involved, the person shall be brought to the facility or Court by the applicant, the person's spouse, the person's guardian, any other interested person, or by a Reservation Law Enforcement Officer if none of the other parties is able to bring the person to the facility or Court.
- B. A person committed to the custody of a facility approved by the President for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:
 - 1. In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer exhibiting alcoholic behaviors, or the likelihood no longer exists; or
 - 2. In case of an alcoholic committed on the grounds of the need for treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.
- C. A person committed under this section may at any time seek to be discharged from commitment by Writ of Habeas Corpus.

SECTION 4. TRIBAL TRANSPORTATION OF INTOXICATED PERSONS.

14-4-1. DEFINITIONS. As used in this chapter:

- A. "Intoxicated Person" means a person, in a public place, whose mental or physical functioning is so substantially impaired as a result of the use of alcohol that he has become disorderly or has become unable to care for his own safety.
- B. "Public Service Officer" means a person appointed by the Chief of the Reservation Law Enforcement Office, or his authorized designee, to assist in the transportation of an intoxicated person under this section.

14-4-2. TRANSPORTATION OF INTOXICATED PERSON BY PEACE OFFICER OR PUBLIC SERVICE OFFICER.

- A. A Reservation Law Enforcement Officer or public service officer may transport an intoxicated person to his residence when it appears to him or her that the intoxicated person will thereby become orderly and able to care for his own safety.
- B. A Reservation Law Enforcement Officer or public service officer may transport an intoxicated person to the nearest health care facility within the county when it appears to him or her that the intoxicated person is unable to care for his own safety or is in need of medical attention.
- C. A Reservation Law Enforcement Officer or public service officer may transport to the tribal jail an intoxicated person who has become disorderly when it appears that the intoxicated person:
 - 1. Has no residence on the Reservation in which he is apprehended; or
 - 2. Is unable to care for his own safety; or
 - 3. Constitutes a danger to others if not transported to the jail.

14-4-3. SEARCH BY RESERVATION LAW ENFORCEMENT OFFICER OR PUBLIC SERVICE OFFICER; NO LIABILITY. A Reservation Law Enforcement Officer or public service officer may, if he

reasonably believes it necessary for his own safety, make a protective search of an intoxicated person before transporting him to a residence, health care facility or jail. No Reservation Law Enforcement Officer or public service officer shall be held criminally or civilly liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the authority of this chapter, if such measures were, in fact, reasonable and did not involve use of excessive or unnecessary force.

14-4-4. NOTIFICATION OF FAMILY. Whenever an intoxicated person is transported by a Reservation Law Enforcement Officer or public service officer to a health care facility or jail, the person in charge of that facility or jail at the time shall see that a responsible member of the intoxicated person's family is notified of his presence there as soon as practicable.

14-4-5. LIABILITY FOR COSTS. Any intoxicated person having transportation, shelter or treatment furnished to him as an intoxicated person under this chapter shall be liable to the Tribe or other facility for its reasonable costs in providing that transportation, shelter and treatment.

14-4-6. TRANSPORTATION TO JAIL; PROTECTIVE CUSTODY.

- A. An intoxicated person held in protective custody under this chapter may be held for a period of no more than twelve (12) hours from the time of his arrival at the jail.
- B. An intoxicated person transported to a health care facility under this chapter shall not be detained at the facility:
 - 1. Once he is no longer intoxicated; or
 - 2. For more than forty-eight (48) hours after admission, unless he is committed under §14-3-2.
- C. An intoxicated person held in protective custody at a jail or transported to a health care facility under this chapter shall not be considered to have been arrested or charged with any crime.
- D. A Reservation Law Enforcement Officer or public service officer shall record the date, time and place of the protective custody of any intoxicated person. This record of protective custody shall not be considered as an arrest or criminal record.

SECTION 5. TOBACCO SALES TO MINORS

14-5-1. TOBACCO SALES TO MINORS PROHIBITED. It shall be unlawful for any person, with criminal negligence, to:

- A. Sell, or cause to be sold, a cigarette or other tobacco product to someone who is younger than 18 years of age; or
- B. Sell, or cause to be sold, a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.
- C. If an offense under this section occurs in connection with a sale by an employee of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

14-5-2. PENALTIES. Any individual who violates Section 1 of this Ordinance shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor or imprisonment for a period not to exceed one hundred eighty (180) days or a fine not to exceed Three Hundred Sixty dollars (\$360.00) or both.

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CHAPTER 15

HUNTING AND FISHING

SECTION 1. GENERAL PROVISIONS.

15-1-1. SHORT TITLE. This Ordinance shall be known as the Mescalero Apache Hunting and Fishing Code of 1997.

15-1-2. STATEMENT OF POLICY.

- A. The Mescalero Apache Tribal Council has the power and authority to protect and preserve the property, wildlife, and natural resources of the Mescalero Apache Tribe. The Mescalero Apache Tribe, recognizing the spiritual, cultural and economic value of the natural resources of the Mescalero Apache Reservation to the Tribe and its members, hereby enacts this Hunting and Fishing Code to ensure proper management and protection of these vital tribal resources for current and future generations of the Mescalero Apache Tribe.
- B. The Mescalero Tribal Council hereby declares its jurisdiction and authority over fishing, hunting, and trapping activities within the Mescalero Apache Reservation.
- C. All game, fish, and other wildlife, other than that which is lawfully privately owned, within the exterior boundary of the Mescalero Apache Reservation are the property of the Mescalero Apache Tribe.
- D. All hunting, fishing, trapping, or otherwise taking or transporting any wildlife located within the exterior boundary of the Mescalero Apache Reservation shall be done in conformity with tribal and federal law, except as where otherwise provided in this Code.

15-1-3. DEFINITIONS.

- A. “Big game animals” mean all species of Bear, Deer, Elk, Antelope, Wild Turkey, Cougar, Big Horn Sheep, and other animals as may be designated by the Tribal Council.
- B. “Small game animals” means all species of Rabbit, Prairie Dog Rodent, Starling, English Sparrow, Squirrel, Wild Dog, Feral Cat, and other animals as may be designated by the Tribal Council.
- C. “Fur-bearing animals” means all species of Muskrat, Otter, Skunk, Weasel, Mink, Beaver, Badger, Fox, Coyote, Raccoon and other animals as may be designated by the Tribal Council.
- D. “Non-game animals” means an animal that is not a big game animal, a small game animal, a fur-bearing animal, or a game fish as defined in this Code.
- E. “Protected species” means any species declared to be a protected species by the Tribal Council or under federal law. A protected species may not lawfully be killed, hunted, taken, captured, wounded, sold, or purchased by any private party.
- F. “Game fish” means all species of Trout, Sunfish, Crappie, Bass, and other species of fish as may be designated by the Tribal Council.
- G. “Game birds” means Geese, Ducks, Mergansers, Coots, Gallinules, Grouse, Partridge, Pheasant, Wild Pigeons, Lesser Prairie Chickens, Quail, Doves and all other birds as may be designated by the Tribal Council.
- H. “Closed season” means the time during which a designated category of wildlife may not be taken.
- I. “Open season” means the time during which a designated category of wildlife may be taken pursuant to this Code.

- J. “Tribe” means the Apache Tribe of the Mescalero Reservation.
- K. “Department” means the Conservation Department of the Mescalero Apache Tribe.
- L. “Directors” means the Director of the Mescalero Conservation Department.
- M. “Wildlife” means any wild animal, whether alive or dead, including without limitation, any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg or offspring thereof.
- N. “Code” means the Hunting and Fishing Code of the Mescalero Apache Tribe.
- O. “Reservation” means all lands within the exterior boundary of the Mescalero Apache Reservation that are controlled by the Mescalero Apache Tribe.
- P. “Fishing” means to take aquatic or amphibious wildlife by any means.
- Q. “Hunting” means to take any non-aquatic wildlife by any means, including but not limited to, by firearm or bow and arrow.
- R. “Permit” means the primary document granting authority to engage in activities covered by this Code.
- S. “Person” means an individual, individual association, partnership or corporation, or any agent of the foregoing.
- T. “Conservation Officer” means any authorized Office of the Mescalero Conservation Department, whether temporary or full time, who has been empowered by the Mescalero Tribal Council to enforce the provisions of this Code, or any Officer of the B.I.A., or any specially appointed federal officer.
- U. “Bag limit” means the maximum number of wildlife which may be taken by any one person during a specified period.
- V. “Possession limit” means the maximum number of wildlife that may be possessed by any one person.
- W. “Carcass” means the dead body of any wildlife or any identifiable part thereof.
- X. “Firearm” means pistols, revolvers, rifles, shotguns or any other device that is capable of being used to expel a projectile by the action of an explosive.
- Y. “Fire shell capacity” means the number of shells that a firearm can hold in both the magazine and chamber.
- Z. “Sell” means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, trading, or exchanging.
- AA. “Take or taking” means to fish, angle, hunt, pursue, catch, capture, seine, trap, kill, possess, or collect any wildlife or any attempt to commit any of these acts.
- BB. “Tag” means a card, label, or other identification device issued for attachment to the carcass of any wildlife, or live wildlife.
- CC. “All-terrain vehicles” means any motorized vehicle designated for or capable of travel over unimproved terrain.
- DD. “Tribal Council” means the elected governing body of the Mescalero Apache Tribe.
- EE. “Affiliate” means a non-enrolled, non-Mescalero person legally married to a member of the Mescalero Apache Tribe.

- FF. “Mescalero Apache Tribal Member” means a Mescalero Apache Indian who possesses a Mescalero Tribal Census Number.
- GG. “Non-Member” means any individual who is not enrolled as a member of the Mescalero Apache Tribe and who is not an affiliate.
- HH. “Tribal waters” means all waters within the exterior boundary of the Mescalero Apache Reservation.
- II. “Road” means any maintained or non-maintained right of way that is or has been used by any form of motor vehicle.
- JJ. “Campground” means an area designated for the placement of temporary shelters for a period of time, typically for at least one twenty-four (24) hour period.
- KK. “Recreational area” means an outdoor area designated for public use that is typically closed during nighttime hours.
- LL. “Motor vehicle” means an automotive vehicle not operated on rails.
- MM. “Primitive weapon” means a spear, sling, sling shot, wrist rocket, bow and arrow with a drawstring under 65 pounds, or any other item or weapon designated to or able to kill, injure, or trap wildlife, that is not a firearm or a trap as defined in this Code.

SECTION 2. THE MESCALERO APACHE CONSERVATION DEPARTMENT.

15-2-1. AUTHORITY OF THE MESCALERO CONSERVATION DEPARTMENT. The director of the department shall report to the Natural Resources Sub-Committee of the Tribal Council, unless otherwise provided by the Tribal Council. The department shall have principal administrative and field responsibility for enforcement of this Code.

15-2-2. MESCALERO CONSERVATION OFFICERS.

- A. Mescalero Conservation Officers, whether full time, part-time, or temporary, shall meet the requirements established for tribal police officers. Mescalero Conservation Officers shall meet such requirements as to physical characteristics, competencies, education and training as may from time to time be established by the Tribal Council or the director for each position or category of positions provided.
- B. The director may from time to time appoint temporary Conservation Officers to aid the Department in the conduct of its functions.
- C. Conservation Officers have authority to issue field civil citations to persons engaged in activities prohibited by this Code when:
 1. The Conservation Officer personally observes the violation take place, or
 2. The Conservation Officer has within his knowledge, before the citation is issued, information constituting reasonable grounds to believe that the person cited has engaged in a prohibited activity, as defined in the Code.

15-2-3. AUTHORITY TO SEIZE PROPERTY. Mescalero Conservation Officers shall have authority to seize any hunting, fishing or recreational equipment or paraphernalia in the possession, custody, or control of the person who violates this Code and is cited for such violation, or a person who aids another in violating this Code. Conservation Officers shall not have the authority to seize the motor vehicle of a person cited for violating this Code unless the violator is cited for taking big game without a permit or if the Conservation Officer issuing the citation reasonably believes that the value of the damage to tribal natural resource caused by the violation exceeds \$200.00.

For purposes of this section, violation means engaging in a prohibited activity under this Code or any

spoliation, waste, or any other damage to any tribal natural resources Violation shall be given the broadest meaning possible so as to carry out the purposes of this Code.

15-2-4. PROCEDURE FOR THE SEIZURE OF PROPERTY.

- A. Conservation Officers shall seize property consistent with Section 2-3 when:
 - 1. A citation is issued, or
 - 2. A violation occurred but no citation is issued due to the violator's absence from the scene, and has abandoned his/her property. The abandoned property will be confiscated as evidence and held by the Conservation Department until the violator is identified and issued a citation for a violation of this Code.
- B. Whenever a citation is issued and property is seized, the Conservation Officer shall provide the alleged violator with a signed receipt for any property, seized, said receipt to identify the violator by name, if known, the officer by name, the date of seizure, and an itemized listing of the property seized.
- C. The Conservation Officer shall promptly transport all seized property to the department, where the property shall be inventoried and stored by the department until adjudication of the matter before the Mescalero Apache Tribal Court or the pre-hearing payment of a civil fine or civil restitution, or both, to the department.
- D. A report on a form and under a procedure to be prescribed by the director shall be filed with the department with respect to the property seized from each violator.
- E. The director shall establish procedures for the transportation⁷ inventory, storage, release, and disposal of seized property.

15-2-5. LIMITATIONS ON THE AUTHORITY OF CONSERVATION OFFICERS.

- A. Mescalero Conservation Officers shall not have authority to issue any permits or tags in the field to persons found engaged in an activity for which such permit or tag is required under this Code.
- B. Mescalero Conservation Officers shall not have authority to accept the payment of civil fines in the field and/or in lieu of seizure of property. Civil fines may be paid and accepted and confiscated property released on payment of such fines before a judicial hearing on the matter only at any office of the department during the prescribed office hours thereof and pursuant to procedures to be established by the director.
- C. Mescalero Conservation Officers shall have such other duties, powers and responsibilities as may from time to time be established by the director or the Tribal Council and that are consistent with this Code.

SECTION 3. PROCLAMATIONS AND REGULATIONS.

15-3-1. PROCLAMATIONS.

- A. At such periods as the Tribal Council shall direct, the Tribal Council shall adopt a Hunting and Fishing proclamation. (See C. below).
- B. The Natural Resources Subcommittee of the Tribal Council, with the assistance of the Director, shall propose a proclamation to the Tribal Council which, when adopted by the Tribal Council, either with or without amendments, shall have the force of law on the Mescalero Apache Reservation.
- C. The Proclamation may provide for the following:
 - 1. Establish hunting, fishing, and trapping seasons, or to close, extend or change hunting,

fishing, or trapping seasons.

2. Close or open any site, including tribal waters, to fishing, trapping, or hunting and to regulate and prescribe the means by which any wildlife may be taken, including, but not limited to, the types of baits, lures, equipment traps, firearms, weapons, or ammunition that may be used to take any wildlife.
3. Establish, change, or eliminate bag or possession limits.
4. Establish change, or eliminate territorial limits for the taking of wildlife.
5. Prescribe the mode and manner of the transportation of any wildlife, or parts thereof, within the exterior boundary of the Reservation; prescribe the manner and mode of exporting any wildlife, or part thereof, from the Reservation; and prescribe the manner and mode of importing any wildlife, or part thereof, into the Reservation.
6. Establish refuges or sanctuaries for specified or all wildlife. When private property is to be included as a refuge, written consent of the owner must first be obtained. All boundary lines of such refuges or sanctuaries shall be posted at the usual place of entrance or exit with signs bearing the title of the department and stating the nature of the refuge or sanctuary created, when created, and by what authority.
7. Establish methods for checking hunters, fishermen, or trappers into and out of the Reservation and designated areas within the Reservation; and prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of tribal natural resource management, and the safety and welfare of hunters, fishermen, landowners, and the Tribe.
8. Establish fees for permits, tags and special hunting seasons.
9. Establish rules and regulations governing the operation of boats or other vehicles upon tribal waters and the operation of all-terrain vehicles on tribal lands.

15-3-2. POWER TO MODIFY HUNTING AND FISHING PROCLAMATION. The Tribal Council retains the power and authority to modify any Hunting and Fishing Proclamation if the Tribal Council determines that the Hunting and Fishing Proclamation is no longer in the best interest of the Tribe. If the Tribal Council modifies a Hunting and Fishing Proclamation, the modification shall not take effect until fifteen days after notice of the modification has been posted at the department and at the tribal offices.

15-3-3. PUBLICATION OF PROCLAMATION. The proclamation adopted by the Tribal Council shall be made available upon request at the tribal offices and the department and shall be posted at the department.

15-3-4. ADDITIONAL REGULATIONS. The Tribal Council may adopt additional regulations of either temporary or permanent application governing the dates, places, means, or manner of taking wildlife or any limitations thereon and such regulations shall have the force of law on the Reservation.

SECTION 4. PERMITS.

15-4-1. PERMIT REQUIRED.

- A. Except as otherwise provided in this Code, an applicable Mescalero Apache Reservation hunting, fishing, or trapping permit is required and must be in the possession of any person or persons who take, possess, or transport, or attempt to take, possess, or transport any wildlife by hunting, fishing or trapping.
- B. Any person wishing to carry a firearm in the woodland areas on the Reservation can be issued a permit which will be numbered and kept on file at the Mescalero Conservation Office, each permit will show the description of each firearm in the person's possession.

- C. State of New Mexico hunting, fishing, and trapping licenses are not required within the exterior boundary of the Mescalero Apache Reservation.
- D. Any person between twelve (12) to eighteen (18) years old, must attend a Hunter's Safety Course conducted by the Mescalero Conservation Office before being issued a hunting permit of any kind.

15-4-2. TYPES OF PERMITS; ELIGIBILITY FOR PERMITS.

- A. Big Game Permit. No person shall take, possess, transport, or attempt to take, possess, or transport any Big Game species on the Mescalero Apache Reservation unless the person has in his or her possession a valid permit allowing such activity.
- B. Small Game.
 - 1. Tribal Members: Tribal members need not obtain a permit to take small game.
 - 2. Affiliates: Affiliates must obtain a permit to take small game when accompanied by a tribal member spouse; otherwise, affiliates may not hunt small game on the Reservation.
 - 3. Non-Members: Non-Members may not hunt small game on the Mescalero Apache Reservation
- C. Game Birds
 - 1. Tribal Members: No member shall take or attempt to take any game bird species unless, at the time of taking or attempted taking, a valid tribal permit is in his or her possession.
 - 2. Affiliates: An affiliate may not take game birds unless accompanied by his or her tribal member spouse who has in his or her possession a valid permit.
 - 3. Non-Members: Non-Members may not take game birds, except for special hunts as provided for in hunting packages offered by the Inn of the Mountain Gods and previously approved by the Natural Resources Subcommittee of the Tribal Council.

15-4-3. SPECIAL PERMITS.

- A. Bear, Beaver, Mountain Lion, Barbary sheep, Oryx and Javelina. Special permits may be issued by the director to take bear, beaver, mountain lion, Barbary sheep, Oryx and Javelina only if it is determined by the director that the animal is causing damage to livestock, crops, dwellings, or recreation areas, or is threatening public safety.
 - 1. Permits will be issued only for the specific animals causing the damage.
 - 2. All rules pertaining to big game hunting must be followed.
- B. Scientific Investigation. Special permits may be issued to take, pursue, or investigate wildlife for research purposes. Requests for a special permit under this section must be made in writing to the department.
- C. Ceremonial Permits.
 - 1. Permits are required to take wildlife for ceremonial, cultural, or religious purposes. The director, upon approval of the President of the Mescalero Apache Tribe, may issue ceremonial permits.
 - 2. The President of the Mescalero Apache Tribe or the director shall assist any tribal member in securing permits from the Secretary of the Interior for the taking or possessing any species protected by federal law.

15-4-4. ISSUANCE OF BIG GAME PERMITS. When permit applications for a big game hunt exceed the number of authorized permits for the big game hunt, permits will be issued on a random basis utilizing a draw system. When permit applications for a big game hunt are less than the number of available permits for that hunt, the balance of permits will be issued by the Conservation Department on a first come, first served basis.

15-4-5. PERMIT POSSESSION. All persons required to possess a permit must have the permit in their possession whenever hunting or carrying a firearm in designated hunt areas. The permit shall not be transferred, loaned, or sold to another person. Any attempt to loan, transfer, or sell a hunting permit will cause the permit to be void and may subject the individual to civil or criminal liability.

15-4-6. SEASON FEES, PERMIT NUMBERS, AND BAG POSSESSION LIMITS. Season fees, permit numbers, and bag possession limits shall be established in the Hunting and Fishing Proclamation.

15-4-7. PROCEDURES FOR OBTAINING A HUNTING PERMIT OR FISHING LICENSE. The Tribal Council shall establish requirements for permits and the procedures by which they are sold.

15-4-8. DEPARTMENTAL RESPONSIBILITY FOR SALE OF PERMITS AND FISHING LICENSES. The Conservation Department shall be responsible for the sale of all permits.

SECTION 5. HUNTING REGULATIONS.

15-5-1. PERSONS INELIGIBLE TO HUNT.

- A. Any person under twelve (12) years old.
 - 1. Any person between twelve (12) to eighteen (18) years old that has not attended a Hunter's Safety Course is ineligible to hunt.
 - 2. The adult responsible for primary supervision of a child adjudicated to have violated this section shall be responsible for payment of the fine imposed under this section.
- B. Any person not possessing the applicable permit as required by this Code.
- C. Any person excluded from the Reservation.

15-5-2. PROHIBITED HUNTING ACTIVITIES.

- A. It is a violation of this section for any person, except as otherwise authorized by the Conservation Department, to hunt, kill, wound, or otherwise take, capture or have in his or her possession any game animal, fur-bearing animal, or any game bird, when the season has not been declared open by the Tribal Council.
- B. It is a violation of this Code for anyone to hunt without first having obtained all required permits and tags, or without having such tag and permit in their possession.
- C. It is a violation of this Code to use pistols or primitive weapons to take or attempt to take any game animal or game bird.

15-5-3. HUNTING EQUIPMENT.

- A. Regulations Governing Firearms
 - 1. Silencers, mufflers, or any other device or instrument designed to silence or reduce the report of a firearm are not permitted.
 - 2. Only center-fire loading rifles may be used to hunt big game.
 - 3. Center-fire loading rifles, rim-fire firearms, or 10-gauge or smaller shotguns, with a three-shell capacity, may be used to hunt small game.
 - 4. Only 10-gauge or smaller shotguns may be used to hunt wild turkey and game birds.

5. Shotgun shells must be of non-toxic shot.

B. Specific Firearm Regulations for Deer and Elk

1. Only the following caliber and bullet weights may be used to hunt deer:

Minimum Caliber	Minimum Bullet Weight
243	100 Grain
6 mm	100 Grain
25-06	117 Grain
270	130 Grain
7mm	150 Grain
>30 Caliber	

1. Only the following caliber and bullet weights may be used to hunt elk and bear:

Minimum Caliber	Minimum Bullet Weight
.270	150 Grain
7mm	150 Grain
.30	180 Grain
>.338	210 Grain

C. Ammunition. Only soft-nosed or hollow-pointed shells may be used to take game.

15-5-4. HUNTING HOURS. No hunting is permitted earlier than one-half hour before sunrise or later than one half-hour after sunset.

15-5-5. HUNTING AIDS; DOGS.

A. Only the following devices may be used as hunting aids:

1. Electrical calls used to hunt coyote, bobcat, fox, and wild dog.
2. Non-electrical handheld devices may be used to hunt any species that may be lawfully hunted under this Code.

SECTION 6. FISHING REGULATIONS.

15-6-1. GENERAL PROHIBITION. It is a violation of this Code to angle, net, trap, seine, shoot, by firearm or other means; spear, poison or otherwise take or attempt to take any fish, amphibians, crustaceans, or mollusk or to possess, transport, ship, sell, offer to sell, purchase, trade or barter any fish, amphibians, crustaceans, or mollusk on the Mescalero Apache Reservation, at any time except as permitted by this Code.

15-6-2. PERMIT REQUIREMENTS.

- A. Tribal members may fish in any tribal waters at any time during the year without the necessity of obtaining a fishing permit.
- B. Affiliates may be issued a free fishing permit as the director determines is in the best interest of the Tribe.

NOTE: Proof of marriage is required before an affiliate will be issued a free fishing permit.

C. Non-Members, who are not affiliates, must obtain a fishing permit before fishing in tribal waters.

15-6-3. PERMIT POSSESSION. Any persons required to possess a Mescalero Fishing Permit must have such permit in his or her possession whenever fishing within the Reservation. The permits shall not be

transferred, loaned or sold to another person. Any attempt to loan, transfer, or sell a fishing permit will cause the permit to be void and may subject the individual to civil or criminal liability.

15-6-4. DESIGNATED AND SPECIAL USE AREAS.

- A. The Ruidoso Cabins Recreation Area, Eagle Creek Recreation Area and the Silver Lake Recreation Area are designated for public use.
- B. All applicable fishing regulations and fees shall apply to guest, non-guest, adults, children, tribal members, affiliates, Non-Tribal members and employees of the Tribe fishing on Lake Mescalero.

15-6-5. SPECIES THAT MAY BE TAKEN.

- A. The following species may be taken in accordance with this Code:
 - 1. Game Fish
 - 2. Non-game fish, except those protected by federal law or tribal proclamation, or as designated as protected by the director or the Tribal Council.

15-6-6. PERMISSIBLE FISHING EQUIPMENT.

- A. Fishing Lines. Fish shall be taken only with one (1) line containing not more than two (2) ho&, one (1) line with one (I) artificial lure that may contain more than one (1) hook, or one (1) line with two (2) artificial lures or flies that contain only one (1) hook each.
- B. Baits. The use of minnows, crayfish, waterdogs, (live or dead) is prohibited on all waters designated for trout fishing. Any other common trout bait or lures are permitted.

15-6-7. BAG AND POSSESSION LIMITS.

- A. Game Fish Limits
 - 1. Tribal Members and Affiliates:
 - a. Adults 8 per day/24 in possession.
 - b. Child 8 per day/24 in possession.
 - 2. Non-Tribal Members:
 - a. Adults 8 per day/24 in possession
 - b. Child 6 per day/12 in possession. (Under 14 years of age).
- B. Non-game Fish have no bag or possession limit.
- C. Injured fish shall not be returned to the water.

15-6-8. FISHING HOURS. Fishing is permitted from one-half hour before sunrise until one-half hour after sunset on all tribal waters open to fishing.

15-6-9. MISCELLANEOUS.

- A. It is a violation of this Code to leave any fishing pole or line unattended or to have more than one (1) line in the water at a time.
- B. It is a violation of this Code to use any boats, rafts, canoes or other floatation items or equipment at any time on any tribal water except Lake Mescalero.

SECTION 7. TRAPPING.

15-7-1. PERMIT REQUIRED.

- A. Season and bag limits for trapping shall be established by the Tribal Council in the Hunting and Fishing Proclamation.
- B. The trapping season is open to tribal members, affiliates and Non-Members.
- C. A valid Mescalero Tribal Trapping-Pelt Permit is required to trap, possess, purchase or transport fur bearer pelts on the Mescalero Apache Reservation.
- D. A maximum of 50 traps per permit shall be allowed.

15-7-2. TYPES OF TRAPS PERMITTED. Only steel traps with a jaw spread no greater than 6 1/2 inches or a trap larger than a No. 3 trap are permitted, except that special traps may be permitted by the director.

15-7-3. SPECIES THAT MAY BE TAKEN. Only coyote, bobcat, fox, raccoon, porcupine, badger, ringtail cat, and wild dog may be taken by trapping.

15-7-4. IDENTIFICATION OF TRAPS. All traps must be identified with name and address of the owner of the trap. A registration number shall be used in lieu of name and address only if the registration number is on file with the Conservation Department.

15-7-5. TRAP SET LOCATION.

- A. It is the responsibility of the person engaged in trapping to inform the Conservation Department of the location and number of traps set immediately after the traps are set.
- B. Traps must be set no less than one (1) mile from any residence or recreational area boundary.
- C. Traps must be set no less than sixty (60) feet from any traveled road, a minimum of fifty (50) feet from any carcass or other exposed meat bait, and a minimum of six hundred (600) feet from any watering site.

15-7-6. BAIT.

- A. Any meat or fish bait used must comply with 7.5.
- B. Scents may be used only at the trap site.
- C. Use of live bait is prohibited.

15-7-7. TRAP CHECKING.

- A. All traps must be checked at least every twenty-four (24) hours by the person setting the trap.
- B. Traps or the contents of traps belonging to another person shall not be disturbed.
- C. At the conclusion of the trapping season all traps shall be picked up and accounted for by the person holding the trapping permit.
- D. Any raptor or other animal not authorized to be taken by trapping that should be caught shall be released. Any dead or severely injured raptor shall immediately be turned over to the Conservation Director.

15-7-8. NOTIFICATION. The director shall provide written notice to the Executive Manager of the Livestock Commission when trapping is to commence in the grazing units. The Conservation Department will post public notice of the trapping season.

SECTION 8. PROHIBITED ACTIVITIES.

15-8-1. CIVIL SANCTIONS. Engaging in an activity prohibited by this Code or failing to take any action required by this Code shall render the violator subject to the civil or criminal sanctions and procedures established in this Code.

15-8-2. CIVIL TRESPASS; DESTRUCTION OF BOUNDARY MARKERS OR SIGNS.

- A. Whoever, without lawful authority or permission, intentionally goes upon any land that is held in trust by the United States for the benefit of the Mescalero Apache Tribe for the purpose of hunting, trapping or fishing thereon, or for the removal of game peltries or fish therefrom, shall pay damages to the Tribe as established by the Tribal Court.
- B. Whoever intentionally destroys, defaces, or removes any sign, fence, or other marking erected by the Mescalero Apache Tribe to indicate the boundary of the Mescalero Apache Reservation, or to give notice that hunting, trapping, or fishing is not permitted thereon, without lawful authority or permission, shall pay damages to the Tribe as established by the Tribal Court.

15-8-3. PROHIBITED ACTIVITIES. In addition to the other provisions contained in this Code, it is a violation of this Code to do any of the following:

- A. **Spotlighting.** It is a violation of this Code for any person to direct artificial light into any open field or forest for purposes of using the artificial light as an aid in killing any wildlife. All Conservation Officers, while in lawful performance of their duties, are exempt from this provision.
- B. **Killing or Possessing a Fawn or Doe.** It is a violation of this Code for any person to kill or knowingly have in his or her possession a fawn or doe deer, or carcass thereof, at any time unless so authorized by the Conservation Department.
- C. **Carrying or Handling Firearms While Under the Influence of Alcohol.** It is a violation of this Code for any person to carry or use any firearm on the Mescalero Apache Reservation while under the influence of alcohol.
- D. **Shooting From a Road.** It is a violation of this Code for any person to shoot any firearm from or across any road on the Mescalero Apache Reservation.
- E. **Careless Use Of a Firearm.** It is a violation of this Code for any person to carry, handle, or use any firearm in such a manner as to recklessly endanger the life, limb, or property of another.
- F. **Reckless Discharge Of a Firearm.** It is a violation of this Code for any person, except tribal or federal law enforcement officers pursuant to the lawful discharge of their duties, to intentionally or recklessly discharge a firearm within 1/4 mile of any residence, or within 1/2 mile of a campground or recreation area.
- G. **Using a Vehicle To Take Game.** It is a violation of this Code for any person to kill, harass, or drive wildlife by means of a motorized vehicle, aircraft, or watercraft or to shoot at any wildlife from a vehicle, aircraft, or watercraft.
- H. **Exceeding Bag or Possession Limits.** It is a violation of this Code for any person to shoot or otherwise take or possess more than the allowed number of any game animal, fur-bearing animal, game bird, or game fish. All wildlife possessed in excess of the prescribed limits shall be automatically forfeited to the Tribe.
- I. **Taking Wildlife From a Wildlife Refuge or Restricted Area.** It is a violation of this Code for any person to intentionally take, or attempt to take any wildlife from any posted wildlife refuge, sanctuary, or restricted area within the boundary of the Mescalero Apache Reservation, unless authorized in writing by the Conservation Department to do so.
- J. **Killing or Taking Protected Species.** It is a violation of this section for any person to hunt, take, injure, harass, or threaten the habitat of any protected species, unless authorized in writing by the Conservation Department to do so.
- K. **Planting of Fish.** It is a violation of this section for anyone to plant, place or attempt to plant or place any type of fish in any tribal waters without prior authorization from the Mescalero Environmental Protection Department.

- L. Use of Protected Wildlife As Bait. It is a violation of this section for any person to use protected wildlife or any part thereof as bait.
- M. Waste. It is a violation of this Code to abandon or permit to go to waste any edible portion of big game, small game, game bird, or game fish, or fail to dispose of any carcass of any wildlife, or to introduce into tribal waters or soil any substance that is or could be harmful to the ecosystem.
- N. Littering. It is a violation of this section for any person to deposit garbage, refuse, ashes, junk, glass, bottles, cans or any other form of litter or debris anywhere on the Mescalero Reservation, except in containers or dumping grounds that are designated for such use. Provided, however, this provision shall not apply to enrolled members of the Tribe following the tribal custom and tradition of discarding items of clothing in the woods, or other wilderness areas. See Mescalero Apache Tribal Code 10-6-2.
- O. Interference With a Mescalero Apache Conservation Officer's Discharge of His Duty. It is a violation of this Code for any person to interfere with, impede, or obstruct a Conservation Officer's discharge of his duty.
- P. Loss of Permit or Tag. It is a violation of this Code for any person, other than the issued party, to use a lost permit or tag or one which is otherwise issued to another party. If a person finds a lost permit or tag, the person shall return the permit or tag to the department.
- Q. Making a False Statement. It is a violation of this Code for any person to intentionally swear or affirm to any false statement while applying for any type of permit or tag.
- R. Negligently Kindling a Campfire. Any person who negligently or willfully kindles or cause to be kindled any fire within the Mescalero Apache Reservation and leaves it un-quenched or who negligently or carelessly without full precaution to prevent a danger to property or life, or is a party to the foregoing, and whether such fire is kindled in his own land or findings any uncontrollable fire burning, fails to give immediate warning and to make reasonable attempts to quench and control it is liable for violating this Code. See Mescalero Apache Tribal Code 10-5-5.
- S. Importing Wild Animals, Birds, or Fish. It is a violation of this section for any person to import any species onto the Mescalero Apache Reservation, except recognized domesticated animals, without first obtaining permission from the Mescalero Apache Tribal Council.
- T. Impersonating a Conservation Officer. It is a violation of this Code for any person to falsely represent himself or herself to be a Conservation Officer.
- U. Entering a Restricted Area. It is a violation of this Code for any person to enter an area that has been designated as restricted for environmental, health, or related purposes, provided that this provision shall not apply to employees of the Mescalero Conservation Office, the Mescalero Environmental Protection Department, and others specifically designated by the President of the Tribe during the lawful performance of their duties.
- V. Miscellaneous. It is a violation of this Code for any person to commit any act declared to be unlawful by a proclamation or regulation of the Tribal Council or to intentionally violate the provisions of such proclamations or regulations.

SECTION 9. CIVIL PROCEEDINGS.

15-9-1. CONSENT TO JURISDICTION. Any person who, after the effective date of this Code, obtains a permit to take any wildlife or parts thereof from the Reservation shall be deemed to have consented to all the provisions of this Code and the criminal and civil jurisdiction of the Mescalero Apache Tribal Court and/or Federal Court.

15-9-2. SUBJECT MATTER JURISDICTION. All matters arising under this Code shall be adjudicated in the Mescalero Tribal Court or Federal Court.

15-9-3. NOTICE. Signs shall be conspicuously posted putting the public on notice that:

- A. Permission to enter the Reservation is conditioned on consent to Mescalero Apache Tribal court jurisdiction.
- B. Permits are required for hunting, fishing, trapping and falconry;
- C. Violators of tribal law and regulations are trespassing and subject to tribal and federal sanctions; and
- D. Hunters must contact the Conservation Department to obtain permits and information.

15-9-4. SEARCHES. No Search will be conducted without a proper Search Warrant.

- A. Nothing in this section limits the authority of the Conservation Officer to detain an individual, vehicle, or other items based on the Conservation Officer's reasonable belief that his safety, or the safety of others may be compromised without the Officer conducting a protective search.
- B. Nothing in this section limits the authority of the Conservation Officer to detain an individual or the individual's belongings, if the individual is found in a restricted area, as identified in the annual Hunting and Fishing Proclamations.

15-9-5. ISSUANCE OF CIVIL CITATION; FORM.

- A. Conservation Officers shall issue civil citations to persons engaging in activities prohibited under this Code consistent with the standards and limitations set out in Chapter 2 and this Chapter.
- B. The Director shall prescribe the form of the civil citation to be issued to violators, provided that the citation shall contain at least the following information:
 - 1. The name and mailing address of the alleged violator;
 - 2. The date and place of the alleged violation;
 - 3. The violation alleged to have taken place; and
 - 4. The time and date upon which court scheduling is contemplated.
- C. A report on a form and under a procedure to be prescribed by the director shall be filed with the department for each citation issued.

15-9-6. DISPOSAL OF SEIZED PROPERTY.

- A. In the event a violator does not appear and contest a citation filed against him, the Mescalero Apache Tribal Court may after a hearing enter a default judgment against the defendant and order forfeiture of the seized property.
- B. Any property that has been forfeited shall be sold at public auction, or, upon written authorization by the Mescalero Apache Tribal Court, may be donated to a qualified tribal program designed to aid tribal members.
- C. The director shall establish procedures for the sale of forfeited property at public auction.

15-9-7. FILING OF CIVIL ACTION; NO FEE; TIME LIMITS; ANSWER; LONG-ARM STATUTE.

- A. Within fifteen (15) days of the issuance of any citation under this chapter, the department shall file an action against the alleged violator or dismiss the citation and immediately return all seized property to the person from whom it was seized.
- B. There shall be court costs for the filing of such action.
- C. The violator may file an answer to the complaint within ten (10) days of receipt of the complaint. Failure to file an answer, or otherwise appear in the action, may result in a default judgment being

taken against the defendant.

- D. LONG ARM STATUTE. Any person who engages in an activity prohibited or regulated by this Code subjects himself or herself to the jurisdiction of the Mescalero Apache Tribal Court notwithstanding that said person may have removed himself/herself from the territorial jurisdiction of the court after being cited for such violation.
- E. SERVICE OF PROCESS. Service of civil complaints filed under this chapter shall be by mail to the address provided by the defendant at the time the citation is issued or another address subsequently provided by the defendant. If the defendant provides no address, service by publication in a newspaper of general circulation in the area of the Mescalero Apache Reservation shall constitute valid service upon the defendant.

15-9-8. CIVIL REMEDIES.

- A. CIVIL LIABILITY SCHEDULE. If it is established after a hearing before the Mescalero Apache Tribal Court that a person has taken a listed animal in violation of this Code, the violator shall pay as restitution to the Mescalero Apache Tribe the dollar amount assigned to the particular animal as set in the Civil Liability Schedule approved by the Tribal Council. No verdict or sum against a violator shall be less than the amount set out in the Civil Liability Schedule. This amount is separate from any damages that may be found by the Tribal Court.
- B. CIVIL LIABILITY. The Director of the Mescalero Conservation Department, or any other Conservation Officer charged with enforcement of the laws relating to Game and Fish, if so directed by the Director, may bring a civil action in the name of the Mescalero Apache Tribe against any person unlawfully wounding, or killing, or in possession of any game, fish, or bird, or parts thereof and recover judgment for the following minimum sums as damage for the taking, killing, or injuring:

For each:

Elk	\$ 1,000.00
Deer	\$ 500.00
Antelope	\$ 500.00
Bear	\$ 500.00
Cougar	\$ 500.00
Birds	\$ 20.00
Fish	\$ 1.00
Endangered species	\$ 1,000.00
Turkey	\$ 150.00

- C. EVIDENCE. Evidence found in warrantless searches can be used in cases filed under this Code in the Mescalero Apache Tribal Court.
- D. ADDITIONAL PENALTIES. In addition to the damages under the Civil Liability Schedule, the department may petition the court for the following additional damages and injunctive remedies as may be appropriate to the particular case:

- 1. Temporary expulsion of Non-Members. A Non-Tribal member may be temporarily

expelled from the Reservation for violations of this Code, as provided under section 10-17-4 of the Mescalero Apache Tribal Constitution.

2. Permanent exclusion of a Non-Member. A Non-Member who has been temporarily expelled from the Reservation on one or more prior occasions and who has been found to have violated a provision of this Code may be permanently excluded from the Reservation as provided for under Article XI of the Mescalero Apache Tribal Constitution.
3. Punitive damages. Nothing in this Code shall be deemed to preclude the Tribe from paying for and being awarded punitive damages in any action filed for a violation of this Code wherein it is alleged and proven by a preponderance of the evidence that the defendant has committed that acts constituting the violation wantonly, willfully, or maliciously.

15-9-9. ISSUANCE OF NOTICE & SCHEDULING OF HEARING BY COURT CLERK. The Clerk of the Court in which, the Department civil complaint is filed shall schedule a hearing on the complaint and cause to be issued with notice thereof made in the manner prescribed for other civil complaints. Provided however, that in the absence of an address to which notice of hearing to the defendant shall be sent, notice of the proceedings shall be published in a newspaper of general circulation in the area of the Mescalero Apache Reservation.

15-9-10. PRE-PAYMENT OF CIVIL FINES. At any point prior to entry of judgment in a civil proceeding initiated under this Chapter, a violator may pay the Civil Liability Schedule fee, or damages, or both, sought by the Department. Upon receipt of such payment the Department shall dismiss the complaint and return any seized property to the violator.

15-9-11. RULES GOVERNING CIVIL ACTIONS UNDER THIS CODE. Civil proceedings under this Code shall be governed by the Mescalero Apache Rules of Civil Procedure.

SECTION 10. CRIMINAL PROCEEDINGS.

15-10-1. JURISDICTION. Any violation of this Code may subject an enrolled member of the Tribe to the criminal jurisdiction of the Mescalero Apache Tribal Court.

15-10-2. PENALTIES. Any person violating this Code over whom the Mescalero Apache Tribal Court has criminal jurisdiction may be subject to a criminal fine of up to \$5,000.00, or imprisonment for one year, or both a fine and imprisonment. Any person violating this Code shall forfeit all game or fish, equipment, and license.

15-10-3. FEDERAL OR STATE PROSECUTION. Any person not under the criminal jurisdiction of the Mescalero Apache Tribal Court may be cited to the appropriate state or federal court for criminal prosecution.

SECTION 11. MISCELLANEOUS PROVISIONS.

15-11-1. INCONSISTENT PROVISIONS. All Tribal Ordinances, Regulations, and Proclamations that are inconsistent with or superseded by this Code are hereby repealed.

15-11-2. SEVERABILITY. If any portion of this Code is declared invalid, such invalidity shall not affect the remaining portions of this Code.

15-11-3. SOVEREIGN IMMUNITY. Nothing in this Code shall be construed as a waiver, in whole or part, of the Tribe's sovereign immunity.

15-11-4. ESTABLISHMENT OF WILDLIFE FUND.

- A. A Wildlife Fund is hereby established.

- B. The Wildlife Fund shall be composed of proceeds received from:
 - 1. Permit fees and tag fees;
 - 2. Damages, seizures, forfeitures, and criminal penalties;
 - 3. Gifts, grants, and contracts, and
 - 4. Such allocations of Tribal revenues as the Tribal Council, in its discretion's, may make from time to time.
- C. Expenditures may be made from the Wildlife Fund for management and preservation of wildlife resources.
- D. Forty percent of the proceeds of the Wildlife Fund shall be designated for the budget of the Mescalero Apache Conservation Department, and the remainder of the proceeds shall be deposited in the general fund of the Tribe.

15-11-5. FALCONRY.

- A. Falconry means the taking of quarry by means of a trained raptor.
- B. It is a violation of this Code to engaging in falconry without first obtaining a permit from the department.
- C. The Tribal Council shall establish the procedures for obtaining a falconry permit, including setting the seasons, bag limits, persons eligible to engage in falconry, and any other provisions that may be appropriate to carry out the purposes of this Code.

15-11-6. DONATION OF GAME ANIMAL CARCASSES.

- A. Game animals donated, left or not claimed after fourteen days from the packing plant at the Trap and Skeet Range shall be distributed to the elderly or needy members of the Tribe or any other eligible tribal program or person.
- B. A person who has legally killed a big game animal may make a gift of the carcass, or parts thereof, provided the following information accompanies the carcass:
 - 1. Name and address of permittee;
 - 2. Detached Permit
- C. Any big game animal carcass confiscated or claimed by the department shall be distributed to the elderly program of the Tribe or any other eligible tribal program or person.

CHAPTER 16

ANIMAL CONTROL

SECTION 1. DOGS.

16-1-1. VACCINATION OF DOGS REQUIRED. Any person who owns or keeps a dog which is six (6) months of age, or older, on the Mescalero Apache Reservation shall have said dog vaccinated against rabies. Vaccinations shall occur annually if phenolized rabies vaccine is used or every three years if chicken embryo modified live rabies virus vaccine is used, or at such intervals as determined by the Public Health Service Medical Officer in Charge. All anti-rabies vaccine shall be administered by or under the supervision of a licensed veterinarian.

16-1-2. VACCINATION CERTIFICATES AND TAGS. The veterinarian who administers anti-rabies vaccine to any dog shall issue to the owner or keeper of the dog a serially numbered Vaccination Certificate as furnished by the State Board of Public Health, containing the name and address of the veterinarian, the type of vaccine used, the name and address of the owner or keeper of the dog, a description of the dog vaccinated, the date of vaccination and the expiration date of the period of immunity. The veterinarian shall also furnish the owner or keeper with a metal dog tag as furnished by the State Board of Public Health, bearing the Certificate number and the expiration date of the period of immunity. The tag shall be affixed by the owner or keeper to a collar or harness and shall be worn by the dog for which the Certificate is issued.

16-1-3. VACCINATION OF DOGS BROUGHT INTO THE MESCALERO APACHE RESERVATION. Any dog brought into the Mescalero Apache Reservation shall be securely confined by the owner or keeper until vaccinated against rabies, which vaccination shall be administered within one (1) week after entry into the Reservation unless the owner or keeper has a Certificate of Vaccination issued by a veterinarian outside the Mescalero Indian reservation and such vaccination conforms to the requirements of this Section, or unless the dog is under six (6) months old.

16-1-4. NOTICE TO HEALTH OFFICER OF ANIMAL BITE. When any person is bitten by an animal, it is the duty of such person or his parent or guardian and of the owner or keeper of the animal to immediately notify the Medical Officer in Charge. The owner or keeper of the animal shall immediately, at his own expense, securely confine said animal for fourteen (14) days at a place designated by the Medical Officer in Charge or the B.I.A. or Tribal Police.

16-1-5. DOGS BITTEN BY RABID ANIMALS. Any dog bitten by an animal known or proved to be rabid shall be killed immediately by its owner or by the B.I.A. or Tribal Police, provided that any dog which has been vaccinated at least three weeks before being bitten shall be confined for ninety (90) days. At the end of the confinement period, the dog shall be released and declared free of rabies by a licensed veterinarian or Medical Officer in Charge. If, as determined by the veterinarian or Medical Officer in Charge, the dog develops rabies during the period of confinement, the owner or keeper shall have it killed and properly disposed of.

16-1-6. QUARANTINE. The Medical Officer in Charge may declare a quarantine against rabies within the Mescalero Apache Reservation when, in his judgment, rabies exists to the extent that it may be a danger to public health. Upon such declaration, all dogs within the Mescalero Apache Reservation shall be confined on the premises of the owner or keeper, in a veterinary hospital, commercial dog kennel or in a municipal animal shelter. After reasonable effort to apprehend any dog running at large and uncontrolled by its owner or keeper during a period of quarantine, any tribal or B.I.A. policeman may kill the dog and properly dispose of the body. A quarantine shall not be removed except on order of the Public Health Officer in charge.

16-1-7. VICIOUS, RABID, OR UNVACCINATED DOGS, PROCEDURE FOLLOWING DEATH FROM RABIES. It is unlawful for any person to keep any dog known to be vicious and liable to attack and injure human beings and/or other animals unless such dog is securely kept so as to prevent injury to any person. It is unlawful to keep any unvaccinated dog or any dog that has shown any symptom of rabies except that, if such dog has bitten a human being, the dog shall be confined for a ten (10) day period. If the dog dies during the confinement period, the head shall be immediately sent to a laboratory by the Medical Officer in Charge. The head of any animal suspected of having died of rabies shall be immediately sent to a laboratory designated by the Medical Officer in Charge under such procedures as specified by the U.S. Public Health Service.

16-1-8. FAILURE TO KILL, PENALTY. It is the duty of any person who is the owner or keeper of any vicious dog, the keeping of which is unlawful, to cause such dog to be killed. Failure to comply with this action, after knowledge by the owner or keeper, shall constitute an offense, and upon conviction thereof, said owner or keeper shall be sentenced to labor and confinement not to exceed sixty (60) days or a fine not to exceed One Hundred Twenty Dollars (\$120.00), or both.

16-1-9. ENFORCEMENT. In any and all areas on the Mescalero Apache Reservation, the Reservation Law Enforcement Office shall provide for the disposal of any unvaccinated dog not under ownership and control. Those dogs without current rabies vaccination tags will be considered unowned and uncontrolled. Dogs disposed of shall be buried.

16-1-10. RIGHT OF ENTRY. The Animal Control Officer, while in performance of his official duties, may enter upon private property for the purpose of apprehending any dog or cat running at large, which shall include any uncontrolled, unwanted, stray dogs or cats. The Animal Control Officer may also enter upon private property, after receiving a valid complaint of a vicious dog thereon, to conduct investigations of any dog(s) known by the owner or keeper to be vicious. (This does not give the Animal Control Officer authority to enter into any private residence without proper authorization of the homeowner). The penalty for this violation shall be a fine of Ten dollars (\$10.00) for the first offense, plus Fifteen dollars (\$15.00) for each additional offense, plus a Ten dollar (\$10.00) court cost.

16-1-11. LIMITATIONS IN OWNERSHIP. No household or any member thereof shall own, harbor, or keep dogs or cats or a combination thereof, that exceed three (3) dogs and two (2) cats at any time provided that the animal(s) have been vaccinated and are confined to a fenced yard, a large animal pen, or held by a leash or chain strong enough to keep the animal under control of the owner. The penalty for this violation shall be fine of Ten dollars (\$10.00) for the first offense, plus Fifteen dollars (\$15.00) for each additional offense, plus a Ten dollar (\$10.00) court cost.

16-1-12. CONFINEMENT DURING ESTRUS (HEAT): Any domestic female cat or dog in the state of estrus shall be confined by the owner or keeper to a building, pen or a secure enclosure so that contact with male animal of the same species will be prevented, except for intentional breeding purposes. The penalty for this violation shall be fine of Ten dollars (\$10.00) court cost.

16-1-13. ANIMAL NUISANCE: It shall be unlawful for owners and keepers to allow, either willfully or through neglect to exercise control over their pets, their dog(s) or cat(s) to be a nuisance to the general public including any sidewalks, any public building used in common by the general public, or upon any private property other than their own. The penalty for this violation shall be fine of Ten dollars (\$10.00) for the first offense, plus Fifteen dollars (\$15.00) for each additional offense, plus a Ten dollar (\$10.00) court cost.

16-1-14. RIGHT OF EUTHANASIA. The Animal Control Officer of the Mescalero Conservation Department will have the right to properly dispose (euthanize) any animal canine or feline, that is running loose, wild or feral in all public or private areas and not under the ownership of any resident on the Mescalero Apache Reservation.

16-1-15. DOG BITES. The owner of any animal (dog or cat) that bites a person and person bitten by an animal (dog or cat) have the duty to report that incident to Mescalero Indian Hospital or the Animal Control Officer as soon as possible. Therefore the owner of an animal (dog or cat) that bites a person should surrender said animal (dog or cat) if necessary to the Animal Control Officer. The penalty for this offense shall be Fifteen dollars (\$15.00) for the first offense, plus Twenty dollars (\$20.00) for each additional offense, plus and Ten dollar (\$10.00) court cost.

16-1-16. VICIOUS CANINES: Any owner of vicious canine e.g. Rottweilers, Pitbulls, Dobermans, etc. shall be responsible for the actions of said canine(s). Therefore, shall have it secured by a heavy chain or kept in a fenced secured yard. The penalty for this offense shall be a fine of Forty dollars (\$40.00) fine, plus a Ten dollar (\$10.00) court cost.

SECTION 2. LIVESTOCK, EQUINE AND FERAL ANIMALS.

16-2-1. RECKLESS RIDING OF HORSES. It shall be unlawful for any person to ride or drive any team, horse or other animal in a reckless manner upon the Mescalero Apache Indian Reservation (the "Reservation").

16-2-2. TRAFFIC LAWS APPLY TO PERSONS RIDING OR DRIVING ANIMALS. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under the Uniform Traffic Code adopted by the Tribe.

16-2-3. ANIMALS ON HIGHWAY AFTER DARKNESS. It shall be unlawful for any person during the hours of darkness to ride a horse or other animal upon the traveled portion of any highway, streets, or walks that are normally by motor vehicles or pedestrians.

16-2-4. TRESPASS BY USE OF ANIMAL. It shall be unlawful for any person to ride a horse or other animal, or drive a horse drawn vehicle, or any other vehicle drawn by an animal, across or upon:

- A. Real or personal property lawfully in the possession of another person without the owner's permission; or
- B. Public property clearly designed to be used primarily by pedestrians.

16-2-5. RIDING OR DRIVING ANIMALS WHILE INTOXICATED. It shall be unlawful for any person to ride or drive any team, horse or other animal while under the influence of any drug or intoxicating beverage or while intoxicated, upon the Reservation.

16-2-6. VIOLATIONS UNDER THIS CHAPTER. A violation under this chapter shall be classified as an offense. The violation will be subject to action of the Tribal Court.

16-2-7. ALTERNATE PENALTY. If no penalty is specified for an offense in Chapter 10 of this Code of the Mescalero Apache Tribe, any violation of this Chapter shall be punished by a sentence to labor or imprisonment for a period not to exceed thirty (30) days of a fine of not to exceed Sixty Dollars (\$60.00), or both.

16-2-8. UNATTENDED LIVESTOCK.

- A. No person shall permit his/her horses or other livestock to be loose or unattended on the highway right-of-way or in any residential or public area.
- B. The Mescalero Apache Tribal Conservation Office ("Tribal Conservation Office") shall secure and confine said livestock and notify owners immediately. If livestock is not moved or claimed within eight (8) hours, it shall be moved to the Rodeo Grounds facilities or another predetermined location.
- C. Livestock which are penned for violation of this Section and not claimed within three (3) days after notice shall be sold by the Order of the Tribal Court through the Tribal Conservation Office.

- D. All residences adjacent to the Highway 70 shall close their access gate to preclude any livestock from entering the right-of-way and all fencing must be properly maintained.
- E. For purposes of §16-2-8 through §16-2-11 livestock shall include only goats, sheep, horses, cattle and swine.

16-2-9. FREE GRAZING PERMIT. It shall be unlawful for any Tribal Member to have livestock on unassigned Tribal range lands without a Free Grazing Permit issued by the Tribal President or his/her designee.

- A. Any Tribal Member wishing to receive a Free Grazing Permit must apply in writing directly to the Tribal President or his/her designee.
- B. Each Free Grazing Permit shall clearly describe the number and type of livestock to graze, brand(s) and the area in which the livestock shall be allowed to graze.
- C. Free Grazing Permits shall be effective for no more than six (6) months but may be renewed at the discretion of the President or his/her designee.
- D. A fee of Thirty Dollars (\$30.00) shall be assessed for each Free Grazing Permit issued. A Ten Dollar (\$10.00) fee shall be assessed for each renewal of a Free Grazing Permit.
- E. This Section applies only to those unassigned range lands outside of the Range Management Units established under Section 17-8-2 of this Code.

16-2-10. GRAZING. Notwithstanding the provisions at Section 16-2-9 and Chapter 17, Section 8 of this Code, no livestock shall be permitted to graze outside leased or assigned areas or on lands leased to another individual or entity without the express consent of the Permittee, Lessee or Assignee and the Tribal President or his/her designee.

16-2-11. VIOLATORS.

- A. Violators of §16-2-8(A-C), §16-2-9 and §16-2-10 shall be fined not less than Thirty Dollars (\$30.00) or more than Sixty Dollars (\$60.00) for a first offense. For a second offense the fine shall not be less than Sixty Dollars (\$60.00) or more than One Hundred Dollars (\$100.00). For additional offenses the fine shall not be less than One Hundred Dollars (\$100.00) or more than Three Hundred Dollars (\$300.00).
 - 1. The cost of securing, confining and maintaining livestock shall be assessed against the owners in each offense. The owner will be assessed a penalty in the amount of thirty dollars (\$30.00) per head to be paid to the Tribal Conservation Office or the Tribal entity expending monies to care for the livestock for each day of trespass or an amount that may be subsequently imposed by the Tribal Council, in addition to the reasonable value of the forage consumed, property destroyed and will be charged for any expenses incurred for impoundment and disposal of the livestock.
 - 2. If after three (3) days any owner is unable to or unwilling to pay the penalty and/or the cost of securing, confining and maintaining said livestock, the Court may order the animals be sold to recover the cost as stated above, the balance of any remaining monies shall be turned over to the owner.
- B. Violators of §16-2-9 of this chapter shall be given three (3) days to remove their livestock or obtain a permit. Three (3) days after notification a fine of Ten Dollars (\$10.00) per day shall be assessed for each trespassing head of livestock.
- C. Violators of §16-2-8 of any item under Section 16-2-8 shall be fined Thirty (30) Dollars (\$30.00) for the first offense and Fifty Dollars (\$50.00) for each additional offense.

16-2-12. FERAL ANIMALS.

- A. STATEMENT OF PURPOSE. All feral horses or other feral animals living within the boundaries of the Reservation are hereby declared to be Tribal property. Regulation of taking and disposition of such animals rests exclusively with the Mescalero Apache Tribe.
- B. DEFINITIONS.
1. "Feral Horse" means any equine animal that is unbranded, or if branded has been allowed by its owner to roam freely on Reservation lands after having received three (3) days' notice to remove such horse on to his or her own assignment.
 2. "To take" means to capture for personal use, to kill by any means, injure or harass; or attempt to capture, kill, injure or harass.
 3. "Feral Animal" means all non-bovine domesticated animals that have reverted to a wild state, (excluding dogs).
- C. PERMITS FOR TAKING.
1. Any person desiring to take one or more feral horses or other feral animals must obtain a Permit from the President of the Mescalero Apache Tribe.
 2. An application for such Permit shall contain the following information:
 - a. Name;
 - b. Address;
 - c. Number of feral horses or feral animals desired to be taken;
 - d. Reasons for taking feral horses or feral animals;
 - e. Manner in which taking will be accomplished;
 - f. Proposed disposition of horse or feral animals;
 - g. Whether such taking shall be for the profit of the taker;
 - h. If so, the source from which profit will be derived;
 3. The Tribal President shall charge a Five Dollar (\$5.00) fee and may impose any conditions on the Permit deemed desirable or advisable.
 4. In the case of an applicant who is not subject to the criminal jurisdiction of the Tribe, a bond in the amount of Two Hundred Fifty Dollars (\$250.00) shall be posted.
 5. The Tribal Council shall draft a standard Contract for trapping such animals, which shall be used until further order or modification by the Council. This Contract shall be between the Tribe and the buyer of the animals.
- D. TAKING.
1. Whenever a Permit for the taking of feral horses or feral animals has been approved, the actual taking of such animals shall be accomplished in the manner described in the Permit Application.
 2. All taking of feral horses or feral animals shall be accomplished in the least cruel manner possible.
 3. Horse traps constructed shall be no closer than one hundred (100) feet from any developed range water infrastructure.
 4. Horse traps constructed shall be dismantled when the trapping Contract expires.

5. After feral horses or feral animals have been taken, the taker shall report to the Conservation Office as follows:
 - a. The number of feral horses or feral animals taken;
 - b. The manner of taking;
 - c. The approximate location of their taking;
 - d. Any brand description.
6. Prior to leaving the Reservation with any feral horses, or feral animals, alive or dead, the taker shall submit all horses or feral animals to the inspection of a Tribal Conservation Officer.
7. The Tribe shall not be responsible for the taking of any horses or animals determined to be not wild at the time of the taking.
8. If the taker purposefully or inadvertently has killed or injured any horse or animal the amount of One Hundred Fifty Dollars (\$150.00), unless such horse or animal is proved to be exceptional value, in which case the taker shall pay to the owner an amount determined by the Tribal President or his/her designee to be the value of such horse or animal prior to the killing or injuring.
9. Feral horses, feral or domesticated animals causing damages on assigned property are the responsibility of the assignee to either remove or exterminate. Extermination shall only be possible in the event the owner has not removed said animals within one (1) week after written notice.

E. PENALTIES.

1. Whenever a person subject to the criminal jurisdiction of the Tribe takes a feral horse or feral animal without a Permit, or maliciously or willfully violates the terms of his/her Permit, he shall be guilty of an offense, punishable by a prison sentence, not exceeding sixty (60) days, or a fine not exceeding Three Hundred Sixty Dollars (\$360.00) or both.
2. Whenever a person not subject to the criminal jurisdiction of the Tribe, takes a feral horse or feral animal without a Permit, he shall forfeit the bond posted pursuant to §16-2-12 (D), and if the feral horses or feral animals are taken for profit, he shall forfeit all animals taken. Additionally, actions described in this sub-Section shall be grounds for exclusion from the Reservation.
3. The penalties prescribed in this Section shall not apply in a case where the taking of feral horses or feral animals was necessitated by reasons of personal safety of the taker or any other person.

SECTION 3. BRANDING.

16-3-1. GENERAL BRANDING REQUIREMENTS.

- A. Every person, firm, company, or corporation owning horses, mules, asses or neat Meat cattle or any cattle shall have and adopt a brand for the animal. Each brand will be recorded with the Mescalero Apache Tribal Conservation Office (“Tribal Conservation Office”).
- B. It shall be the duty of the Tribal Conservation Office to publish a Brand Book, in which shall be given a facsimile or copy of all brands recorded in his/her office, together with the owners name and the residence; such names and brands shall be arranged in the most convenient form for reference, and the following may be the form of said Brand Book:

DATE	NAME	MAILING ADDRESS	DESCRIPTION OF BRAND	REMARKS
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- C. Owners of livestock shall be required to record their brand or Bill of Sale and marketing description with the Tribal Conservation Office. Notice of this requirement will be published conspicuously in the Tribal Administrative Offices. There will be a fee of Five Dollars (\$5.00) for recording of the brand. In case different persons attempt to register the same brand, the first to have the brand recorded shall control, providing the brand is not registered with the New Mexico Livestock Board and subsequent owners shall be required to adopt a different brand.
 - D. The Bow and Arrow Brand is required on all livestock (equine and individually owned cattle) on the left shoulder in addition to the individual brand.

16-3-2. TRANSFER OF BRANDS.

- A. Brands recorded in accordance with the provisions of this Section are personal property of the person in whose name they are recorded. Ownership may be transferred in the same manner as other personal property. The fee for recording a transfer of ownership with the Tribal Conservation Office shall be Five Dollars (\$5.00).
- B. Where there is a failure to record a transfer of ownership as described in Paragraph A herein, the last person listed as owning the livestock shall be responsible for the care and location of such livestock, including any costs, fees or fines assessed as a result of the location of and damage cause by such livestock.
- C. Minors owning horses, mules, asses or meat cattle separate from that of the parent or guardian may have a mark and brand which shall be recorded in accordance with their equipment of this Section, but the parent or guardian shall be responsible for the proper use of such mark and brand by any such minor.
- D. It shall be unlawful for any owner of livestock in originally marking them to make use of or keep up more than one mark or brands provided, that any such owner may own and possess animals indifferent marks or brands, if they were acquired by him by purchase or other lawful manner, and evidenced by bills of sale in writing, properly acknowledged, from the previous owner or owners of the animals having such brands, or from the heirs, executors, administrators or legal representatives of the owner or owners.

16-3-3. UNLAWFUL POSSESSION OF LIVESTOCK.

- A. No person shall buy, receive, sell, dispose of or have in his/her possession any livestock on this Reservation unless the person selling or disposing of such livestock shall give, and the person buying or receiving such livestock shall take, a written Bill of Sale. This Bill of Sale shall give the number, kind, marks and brand of each animal sold as required by this Section. Failure to produce this Bill of Sale shall be prima facie evidence of illegal possession against any person charged with theft, unlawful possession, handling, driving or killing any livestock.
- B. Any person who has purchased or received, or has in his/her possession, any livestock either for himself or another, shall exhibit the Bill of Sale for the livestock at the reasonable request of the Tribal Conservation Office. Any person who has purchased or received, or has in his/her possession; any livestock either for himself/herself or another, and who cannot produce proof of ownership as required under this Section shall have such livestock impounded. If sufficient proof of ownership has not been established to the satisfaction of the Tribal Conservation Office within three (3) days of the impoundment, the impounded livestock will be handled and disposed of in the same manner as is now or may hereafter be provided for the handling and disposal of strays.
- C. The cost of securing, confining and maintaining livestock shall be assessed against the owners in

each offense. The owner will be assessed a penalty in the amount of thirty dollars (\$30.00) per head for each day of trespass or an amount that may be subsequently imposed by the Tribal Council, in addition to the reasonable value of the forage consumed, property destroyed and will be charged for any expenses incurred for impoundment and disposal of the livestock.

- D. Any unbranded livestock excepting offspring with a branded mother, shall be subject to seizure by any Reservation Law Enforcement officer and shall be handled and disposed of in the same manner as is now or may hereafter be provided for the handling and disposal of strays.

16-3-4. MISCELLANEOUS PROVISIONS.

- A. Any person who shall receive livestock by way of gift or inheritance shall register this transaction, with appropriate proof, at the Tribal Conservation Office. In this and in all other respects he should protect his/her property interest in his/her livestock as though he received it in a business transaction.
- B. All unbranded feral horses on the Reservation are hereby declared to be the property of the Tribe and none of the horses shall be subject to capture or other disposition without permission of the Tribe.
- C. One officer within the Tribal Conservation Office of the Tribe shall be designated by the Director of the Tribal Conservation Office as a livestock and brand inspector. He or she shall have an assistant.

CHAPTER 17

LAND USE CODE

SECTION 1. GENERAL PROVISIONS.

17-1-1. RESERVATION OWNERSHIP. The equitable title to all land within the exterior boundaries of the Mescalero Apache Reservation, not held in fee simple, is owned by the Mescalero Apache Tribe, for and on behalf of the present and future generations of enrolled tribal members. The legal title to Reservation lands is held by the United States in trust for the Tribe and its members.

17-1-2. PURPOSES. The purpose of this Land Code is to preserve and protect the land-based patrimony of the Tribe in order that present and future generations of Mescalero Apaches may enjoy the productive capacity of the Reservation and maintain it as their home in perpetuity. Toward these ends this Land Use Code provides a fair and equitable program for use of Reservation lands by all tribal members.

17-1-3. AUTHORITY. This Land Use Code is enacted pursuant to the authority contained in the Revised Mescalero Constitution, Articles II, III, XI and XXV.

17-1-4. DEFINITIONS. As used in this chapter:

- A. "Enrolled Member" means any person whose name has been placed on the census roll of the Mescalero Apache Tribe.
- B. "Family" means all persons occupying a single habitation or living together as a single domestic group.
- C. "Head of Family" means that person who is recognized by the family as the individual who exerts control over the other members and is charged with the legal or moral responsibility to provide care for the dependent members. In the case of a female tribal member who has married a Non-Member, the female tribal member shall be considered the head of the family for the purposes of this chapter.

SECTION 2. LAND ASSIGNMENTS.

17-2-1. GENERAL PROVISIONS. The following general provisions shall govern all land assignments, regardless of their character.

- A. An assignment of land by the Tribe shall convey to the Assignee only the right to use such land.
- B. Assignments shall be made only by the Tribe.
- C. Assignments shall be made only to an enrolled tribal member who is the head of a family as defined in §17-1-4-C.
- D. Use of all Assignments shall be subject to the provisions of this chapter and all pertinent federal laws and regulations.
- E. Assignments may be forfeited for the reasons and under the procedures established in other Sections of this chapter.
- F. Assignments may be transferred only pursuant to the provisions contained in §17-2-4 of this chapter.
- G. No Assignment shall infringe upon any other Assignment, Lease, Right-of-way, or Easement.
- H. All Assignments shall conform to the provisions relating to one of the following types:
 - 1. Homesite Assignments;
 - 2. Agricultural Assignments; and

3. Business Assignments.

- I. Unless otherwise limited by the Tribal Council, hereafter, the duration of all land Assignments shall be in perpetuity, subject to forfeiture provisions contained in Section 6 of this chapter.

17-2-2. ASSIGNMENT APPLICATIONS. All Applications for any Assignment can be made only by the head of a family who is an enrolled member of the Mescalero Apache Tribe. Applications must be presented to the Tribal Council, together with an Application fee of Twenty-five Dollars (\$25.00). Sample Application as follows:

Application For Assignment of Land

Name of Applicant: _____

Names of spouse, children and relations who applicant anticipates will live on Assignment: _____

Location and specific description of Assignment sought: _____

Type of Assignment applied for: (1, 2, or 3)

1. Homesite (Please provide Building Plan)
2. Business (Please provide Building Plan and Business Operation Plan)
3. Agricultural (Please provide agricultural or Grazing Plan)

I certify that I have read, discussed with Tribal Officers, and understand the forfeiture provisions of the Tribal Code. (§17-6-1 - 17-6-7), a copy of which was provided me when I requested this Application.

Signature _____ Date _____

Tribal Disposition: _____

Additional Requirements to Application: _____

Conditions to use of Assignment: _____

Assignment granted: _____

Signature _____

Office: _____

17-2-3. APPLICATION APPROVAL. After presentment of the Assignment Application, except in the following instances:

- A. An Assignment may be transferred by the Assignee by inter vivos gift to any one or all of his children. If such child or children are not eligible to receive an Assignment according to the terms of §17-2-1-C, because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to the terms of Chapter 6 of this Code until such time as he or they do become eligible to receive an Assignment.
- B. An Assignment may be devised by a valid Will of the Assignee to any one or all of his children. Proceedings upon the validity of the Will must conform to Chapter 7 of this Code. If at the time of death of the Assignee, such child or children are not eligible to receive an Assignment, because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to Chapter 6 of this Code until such time as he or they do become eligible to receive an Assignment.
- C. Should the Assignee die intestate, the Assignment shall become the property of the surviving spouse. If the surviving spouse is not eligible to receive an Assignment because he or she is not an enrolled member of the Tribe, the Tribal Court sitting in probate shall grant the Assignment to

any child or children, as the case may be. If such child or children are not eligible to receive an Assignment because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to the terms of Chapter 6 of this Code until such time as he or they do become eligible to receive an Assignment. In the case of intestacy where the surviving spouse is not eligible to receive an Assignment, the surviving spouse shall be allowed to live on the Homesite Assignment as long as he or she lives or resides upon the Reservation.

- D. An assignment may be transferred by the Assignee by inter vivos gift to any person who is an enrolled member of the Mescalero Apache Tribe. If the recipient of said assignment is a minor, the Tribal Court shall appoint a guardian, pursuant to Chapter 6 of this Code.

Tribal Council approval of transfer by inter vivos gift of land assignments shall determine its authenticity.

17-2-4. TRANSFER OF AN ASSIGNMENT. An Assignee may not sell or transfer his Assignment, except in the following instances

- A. An Assignment may be transferred by the Assignee by inter vivos gift to any one or all of his children. If such child or children are not eligible to receive an Assignment according to the terms of §17-2-1(C) because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to the terms of Chapter 6 of this Code, until such time as he or they do become eligible to receive an Assignment.
- B. An Assignment may be devised by a valid Will of the Assignee to any one or all of his children. Proceedings upon the validity of the Will must conform to Chapter 7 of this Code. If, at the time of death of the Assignee, such child or children are not eligible to receive an Assignment, because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to Chapter 6 of this Code, until such time as he or they do become eligible to receive an Assignment.
- C. Should the Assignee die intestate, the Assignment shall become the property of the surviving spouse. If the surviving spouse is not eligible to receive an Assignment because he or she is not an enrolled member of the Tribe, the Tribal Court sitting in probate shall grant the Assignment to any child or children, as the case may be. If such child or children are not eligible to receive an Assignment, because he or they are not the head of a family, then such child or children must have a guardian appointed by the Tribal Court pursuant to Chapter 6 of this Code, until such time as he or they do become eligible to receive an Assignment. In the case of intestacy, where the surviving spouse is not eligible to receive an Assignment, the surviving spouse shall be allowed to live on the homesite Assignment as long as he or she lives or resides upon the Reservation.

17-2-5. ASSIGNMENT INVENTORY. An inventory of all Assignments on the Reservation shall be kept by the Programs Committee. A special Assignment Book shall be kept by the Tribe which shall list each Assignment by an Assignment Number and shall contain the following information:

- A. Name of Assignee;
- B. Type of Assignment;
- C. Location and description of Assignment;
- D. Manner in which Assignment was obtained;
- E. Leasing information, if applicable;
- F. Spouse and children of Assignee;
- G. Copies of the Application and required attachments;
- H. Conditions placed upon the use of the Assignment, if any.

17-2-6. ACCESS TO ASSIGNMENTS

- A. An assignment of land, which does not abut a designated federal, state, or tribal road, and though which designated federal, state, or tribal road does not run, be and hereby is designated as an “inaccessible assignment.”
- B. The holder of an inaccessible assignment shall have free, unhindered passage across those assignments which lay directly, in the most expedient path, between the inaccessible assignment and the closest federal, state or tribal road.
- C. The holder of the inaccessible assignment shall:
 - 1. Be solely responsible for maintaining any passage through other assignments.
 - 2. Be responsible for opening and closing any gates on the assignment through which he or she crosses.
 - 3. Be liable to the holders of the assignments through which he or she crosses for any damages done to or on these other assignments.
- D. In the event that the holder of an assignment refuses free, unhindered passage to the holder of an inaccessible assignment that holder of the inaccessible assignment may seek a “Writ of Unhindered Passage” from the Mescalero Apache Tribal Court.
- E. The Mescalero Apache Tribal Court shall employ the following procedures when determining if a Writ of Unhindered Passage should issue:
 - 1. Upon receiving an application for a “Writ of Unhindered Passage, the Mescalero Apache Tribal Court shall schedule a hearing and shall provide notice of said hearing to all assignment holders who will be affected by the Writ.
 - 2. Upon a showing from the holder of an inaccessible assignment that he or she cannot gain access to his or her assignment without crossing the assignment of another, and unless the holder of assignment demonstrated, by clear and convincing evidence that granting such writ would cause undue harm or mischief, the Mescalero Apache Tribal Court shall issue a Writ of Unhindered Passage to the holder of the inaccessible assignment.
- F. Effect of Writ of Unhindered Passage
 - 1. The Writ of Unhindered Passage entitles it holder, the holder’s guest, and invitees, and the fellow residents of the holder’s residence, to freely travel, without hinder or delay, across the assignments specified in the Writ.
 - 2. The Writ of Unhindered Passage shall run with the land assignment and shall be transferable by the assignment holders only to future assignment holders of the same assignment.
- G. Any intentional interference with passage pursuant to a Writ of Unhindered Passage shall be punishable as contempt of Court.
- H. This Writ of Unhindered Passage may be dissolved upon application to the Mescalero Apache Tribal Court if the circumstances originally mandating such Writ shall have materially changed or shall have ceased to exist.

SECTION 3. HOMESITE ASSIGNMENTS.

17-3-1. HOMESITE ASSIGNMENTS. A Homesite Assignment is a tract of land assigned for the purpose of providing an area of habitation to the Assignee and his immediate family. Homesite Assignments shall be no more than two (2) acres in area, unless it can be demonstrated that additional land is needed to provide sufficient area for a house, supporting buildings, and a family garden plot.

17-3-2. HOMESITE ASSIGNMENT APPLICATION. A Homesite Assignment Application must conform to the requirements of §17-2-2. A Building Plan must be attached to the Application.

17-3-3. BUILDING PLAN. Building Plans which must be attached to the Application for a Homesite Application must include:

- A. Blueprints of any dwelling or fixture to be constructed on the land;
- B. Plans for obtaining a water supply sufficient to meet the needs of the dwellings and their inhabitants; and
- C. Plans for liquid waste disposal in conformance with other provisions of this Code.

17-3-4. USE OF THE HOMESITE ASSIGNMENT. A Homesite Assignment shall be used only for habitation of the head of the family and his family. A small garden plot may be planted for personal, non-commercial use. The Assignee must provide and maintain adequate fencing around the Homesite Assignment. The Assignee may keep a reasonable number of domestic animals and livestock within the fenced area of his Assignment.

17-3-5. VIOLATIONS. Any violation of the conditions placed on the Homesite Assignment or of any pertinent provision of this Code by the Assignee or any of his family shall be deemed an offense, the conviction thereof shall subject the Assignee to a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or a prison sentence of one hundred eighty (180) days, or both.

17-3-6. LEASE OF A HOMESITE ASSIGNMENT. A Homesite Assignment may be leased for homesite purposes only by the Assignee, if prior approval has been obtained from the Tribal Council and the Housing Authority.

SECTION 4. AGRICULTURAL ASSIGNMENTS.

17-4-1. AGRICULTURAL ASSIGNMENTS. An Agricultural Assignment is a tract of land used for the purpose of dry land irrigated farming. An Agricultural Assignment shall consist of one economic unit, not limited to a certain number of acres, but representing that amount of acreage necessary to return Three Thousand Dollars (\$3,000.00) of net income per annum to the Assignee after capital, operation, and maintenance costs have been met. An Agricultural Assignment may also be used for grazing purposes in conformity with Section 8 of this chapter. The Tribe, in granting an Agricultural Assignment, does not guarantee any minimum return.

17-4-2. AGRICULTURAL ASSIGNMENT APPLICATION. An Application for an Agricultural Assignment must conform to the requirements of §17-2-2. An Agricultural or Grazing Plan must be attached to the Application.

17-4-3. USE OF AN AGRICULTURAL ASSIGNMENT. After the Application for an Agricultural Assignment has been granted, the Assignee shall operate his farm in a manner consistent with good farming husbandry and conservation according to the Plan of Operation developed pursuant to §17-4-2.

17-4-4. RESERVED FOR FUTURE USE

17-4-5. VIOLATIONS. Any violations of or any willful failure to follow the Agricultural Plan or Grazing Plan as set forth in §17-4-2 or the conditions placed upon an Agricultural Assignment or of any provision in this chapter, shall be considered an offense, the conviction of which shall subject the Assignee to a fine not to exceed Three Hundred Sixty Dollars (\$360.00), or a prison sentence of one hundred eighty (180) days, or both. Additionally, any commission or omission of any act which threatens to destroy the future agricultural or grazing capacity of the Assignment may result in forfeiture and reassignment pursuant to the provisions contained in Section 6 of this chapter.

17-4-6. LEASE OF AGRICULTURAL ASSIGNMENT.

- A. An Agricultural Assignment may be leased for agricultural or grazing purposes only by the

Assignee to a qualified person with the approval of the Tribal Council.

B. Such Leases shall be in the following form:

MESCALERO INDIAN RESERVATION

Mescalero, New Mexico

LEASE

This Lease entered into this ___ day of _____, 20__, between _____, of _____, hereinafter referred to as the "Lessor," and _____, of _____, referred to as the "Lessee."

1. DESCRIPTION OF PROPERTY: The Lessor hereby agrees to allow the use of said land by the Lessee for the purposes, and for the purposes only, of farming, or grazing during the time specified below. Further, the Lessor does/does not (Mark Out One) agree to allow the Lessee to use such buildings that are located on such land for, and to the extent required by, the above specified uses. The land covered by this Lease is described as follows:

(Insert Description Of Land Here)

2. TERM OF LEASE. The term of this Lease shall be for a one year period beginning on the ___ day of _____, 20__, and ending with the ___ day of _____, 20__. There is no option for renewal.

3. RENTAL RATE. The Lessee shall pay to the Lessor the sum of \$_____ in cash and/or ___% of the crops. Cash is payable upon execution of this document, and/or in the form of the value of such crops and/or improvements as are listed below. Crops are payable not later than one year after the beginning of this Lease, which shall constitute the partial or complete rental for the term of this Lease.

4. CONDITIONS. It is mutually agreed by the Lessee and Lessor that the express purpose of this Lease is to enable the Lessee to cultivate, improve, and farm and/or graze the lands in a manner to prevent soil erosion or other injuries to the land and crops. Only those portions of the Land Assignment which are suitable for agricultural or grazing lands will be utilized under this Lease, and no hunting, fishing, timber or any other rights or uses other than those herein specifically stated are authorized or granted by this Lease.

5. IMPROVEMENTS. Any improvements existing on the lands described in this Lease at the time the Lease is entered into must be in equal or better condition at the expiration of the Lease, normal wear and tear excepted. Unless otherwise provided herein, it is understood and agreed that any buildings, fences or other improvements placed upon the said land by the Lessee shall become the property of the Lessor upon termination or expiration of this Lease.

6. UNLAWFUL CONDUCT. The Lessee agrees that he will not use or cause to be used any part of said premises for any unlawful conduct or purpose.

7. SUBLEASES AND ASSIGNMENTS. This Lease shall not be assigned or subleased, in whole or in part, to any other party.

8. VIOLATIONS OF THIS LEASE. It is understood and agreed that violations of this Lease shall be acted upon in accordance with applicable Tribal and Federal laws and regulations.

9. LIVESTOCK. The Lessee agrees that he will not bring onto, nor allow the bringing onto the lands covered by this Lease, any livestock. (This provision is optional and may be stricken according to the agreement of the parties.)

10. APPROVAL. It is further understood and agreed between the parties hereto that this Lease shall be valid and binding only after approval of the President of the Tribe on behalf of the Mescalero Apache Tribe.

IN WITNESS WHEREOF, the parties have signed this Lease and it is hereby approved.

APPROVED:

LESSOR, President, Mescalero Apache Tribe

DATE

LESSEE

DATE

SECTION 5. BUSINESS ASSIGNMENTS.

17-5-1. BUSINESS ASSIGNMENTS. A Business Assignment is a tract of land used as a principal location of a commercial venture owned and operated by the head of a family.

17-5-2. BUSINESS ASSIGNMENT APPLICATION. A Business Assignment Application must conform to the requirements of §17-2-2. A Business Operation Plan and Building Plans must be attached.

17-5-3. BUSINESS PLAN. A five-year Business Plan of Operation must be developed by the prospective Assignee which shall include a discussion of credit availability, site improvements and estimated costs, building plans and estimated costs, anticipated operation costs and profits, and a location map.

17-5-4. USE OF A BUSINESS ASSIGNMENT. A Business Assignment may be used only in order to conduct a commercial venture owned and operated by the head of a family. All applicable Tribal and Federal regulations must be followed.

17-5-5. VIOLATIONS. Any violation of the conditions placed upon a Business Assignment of any provisions of this chapter, or of any provision of the Business Plan as set forth in §17-5-3, or of any provision in this Code relating to the conduct of business on the Reservation shall be considered an offense, the conviction of which shall subject the Assignee to a fine not to exceed Three Hundred Sixty Dollars (\$360.00) or a prison sentence of one hundred eighty (180) days or both. Additionally, if the business conducted upon the Business Assignment should at any time represent an unreasonable threat to the health, safety or welfare of any person on the Mescalero Apache Reservation, such Business Assignment may be forfeited and reassigned pursuant to the terms of Section 6 of this chapter.

17-5-6. LEASE OF BUSINESS ASSIGNMENT.

A. A Business Assignment may be leased for business purposes only by the Assignee to a qualified person with the approval of the Tribal Council.

B. Such Lease shall be in the following form:

MESCALERO INDIAN RESERVATION

MESCALERO, NEW MEXICO

This Lease is entered into this ___ day of _____, 20___, between _____, of _____, hereinafter referred to as "Lessor," and _____, of _____, hereinafter referred to as "Lessee."

1. DESCRIPTION OF THE PROPERTY. The Lessor hereby agrees to allow the use of said land and improvements located thereon by the Lessee for the purpose of conducting the business of _____.
The land covered by this Lease is described as follows:(Insert Description Of The Land)
2. TERM OF LEASE. The term of this Lease shall be for a one (1) year period beginning on the ___ day of _____, 20___, and ending on the ___ day of _____, 20___. There is no option for renewal.
3. RENTAL RATE. The Lessee shall pay to the Lessor the sum of \$_____ in cash and/or ___% of gross income. Cash is payable upon execution of this document.
4. CONDITIONS. It is mutually agreed upon by the Lessor and the Lessee that the express purpose of this Lease is to enable Lessee to conduct a business or commercial venture on the lands and improvements leased. Lessee shall conduct his business in a commercially reasonable manner.
5. IMPROVEMENTS. All improvements to the land as listed below existing at the time of this Lease must be in equal or better condition at the expiration of this Lease, normal wear and tear excepted. Unless otherwise provided herein, it is understood and agreed that any improvements placed upon the lands by Lessee shall become the property of the Lessor upon termination or expiration of this Lease.
6. UNLAWFUL CONDUCT. The Lessee agrees that he will not use or cause to be used any part of the premises which is the subject of this Lease for any unlawful conduct or purpose.
7. SUBLEASES AND ASSIGNMENTS. This Lease shall not be assigned or subleased in whole or in part to any other party.
8. VIOLATIONS OF THIS LEASE. It is understood and agreed that violations of this Lease shall be acted upon in accordance with applicable Tribal and Federal laws and regulations.
9. APPROVAL. It is further understood and agreed between the parties hereto that this Lease shall be valid and binding only after approval of the President of the Tribe, on behalf of the Mescalero Apache Tribe.

IN WITNESS WHEREOF the parties have signed this Lease and it is hereby approved.

APPROVED:

LESSOR, President, Mescalero Apache Tribe

DATE

LESSEE

DATE

SECTION 6. FORFEITURE.

17-6-1. FORFEITURE. An Assignment in the present possession of a tribal member shall not be reassigned to an eligible prospective Assignee by the Tribal Council except in the case of non-use. In the case of non-use, the Assignment shall be subject to forfeiture.

17-6-2. NON-USE. For the purposes of this Section non-use shall consist of the following:

- A. In the case of an Agricultural Assignment, permitting the Assignment to lie fallow or ungrazed for two (2) years; or
- B. In the case of a Business Assignment, failure to use the Assignment in the conduct of a commercial enterprise for two (2) years; or
- C. Alteration or attempted alteration of the land in such a manner as to preclude the use thereof by others, without prior approval of the Tribal Council; or
- D. Permitting the Assignment to be used by another for two (2) years without executing a valid Lease.

17-6-3. PORTIONS OF AN ASSIGNMENT. The rules contained in this Section regarding Assignments are equally applicable to an entire Assignment or any portion of an Assignment.

17-6-4. FORFEITURE PROCEDURE. Whenever it has come to the attention of the Programs Committee of the Tribal Council that an Assignment may be forfeited for non-use as prescribed in §17-6-2, the Chairman of the Programs Committee shall initiate forfeiture proceedings in the following manner:

- A. The Programs Committee, acting for the Tribe, and upon a majority vote, shall cause to be filed with the Tribal Court a PETITION FOR FORFEITURE setting forth the following facts:
 - 1. The authority of the Tribe to petition for forfeiture;
 - 2. The name of the Assignee;
 - 3. The location and description of the Land Assignment;
 - 4. A description of the Assignment or portion thereof to be forfeited;
 - 5. The type of Assignment and authorized uses thereof;
 - 6. The facts of non-use upon which forfeiture is based.
- B. The Petition shall be served upon the Assignee along with a Summons which shall require the Assignee to file an Answer to the Petition within twenty (20) days.
- C. If no answer is filed within the time prescribed, upon Motion of the Tribe, the Tribal Court shall declare a Default and enter an Order of Forfeiture. However, upon timely Answer of the Assignee, the Tribal Court shall set the matter for hearing within sixty (60) days.
- D. At the forfeiture hearing the Tribe shall bear the burden of proving non-use.
- E. The same right of appeal shall exist in forfeiture matters as in all other cases before the Tribal Court, except that on appeal no member of the Programs Committee shall sit in judgment of the case.

17-6-5. ESCHEAT. Upon the death of the Assignee of an Assignment, if there are no heirs to whom the Assignment may be granted as set forth in §17-2-4, the Tribal Court shall enter an Order of Escheat and the Assignment shall revert to the control of the Tribe.

17-6-6. IMPROVEMENTS. Upon forfeiture or escheat of an Assignment all non-removable improvements, likewise, shall be forfeited or escheated to the Tribe.

17-6-7. RE-ASSIGNMENT. After an Order of Forfeiture or an Order of Escheat has been entered by the Tribal Court, the Assignment shall be made available for reassignment by the Programs Committee of the Tribal Council pursuant to §17-2-2 and §17-2-3.

SECTION 7. CONDEMNATION.

17-7-1. CONDEMNATION. The Tribe may acquire by condemnation the usufructary right possessed by a tribal member to trust lands located within the Reservation. Lands sought to be condemned must be used only for public purposes of the Tribe.

17-7-2. PUBLIC PURPOSES. For the purpose of this Section, the term "Public Purposes" shall denote any purpose, the objective of which is the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of the inhabitants of the Mescalero Apache Reservation.

17-7-3. CONDEMNATION PROCEDURE. Condemnation of any lands shall be commenced upon a majority vote of the Tribal Council acting for the Tribe. The following procedure shall be followed:

- A. A Condemnation Petition shall be filed with the Tribal Court which sets forth the following:
 1. A statement of the Tribe's authority to condemn the land in question.
 2. A general description of the public purpose for which the land is being condemned.
 3. An accurate description of the land to be condemned.
 4. A description of all permanent improvements attached to the land.
 5. A statement that the needs and purpose of the Tribe to the land are of greater public need than that of the person whose land is being condemned.
 6. A statement of the full value of all permanent improvements attached to the land.
 7. The names and addresses of all known persons who have an interest in the land or improvements.
- B. The Petition shall be served upon the owner of the improvements along with a Summons which shall require the owner to file an Answer to the Petition within twenty (20) days.
- C. If no Answer is filed within the time prescribed, upon a Motion of the Tribe, the Court shall declare a Default and enter an Order of Condemnation. However, upon timely Answer, the Tribal Court shall set the matter for hearing within sixty (60) days.
- D. At the condemnation hearing the Tribe shall bear the burden of proving public purposes of the condemnation and value of the improvements attached to the land.
- E. The same right of appeal shall exist in condemnation matters as in all other cases before the Tribal Court.

17-7-4. PAYMENT. After a final decision has been rendered by either the Tribal Court or the Tribal Council, the Tribal Council shall cause to be issued to the owner of the improvements a check for the full value of such improvements as ordered.

SECTION 8. GRAZING.

17-8-1. APPLICATION. This Section (the "Grazing Code") shall apply to all lands within the Mescalero Apache Indian Reservation and all other grazing lands now owned or hereafter received through gift, grant, or purchase, or in any way placed under the jurisdiction of the Tribal Council. Excepted from this Grazing Code are any lands set aside by the Tribal Council as "Special Use Areas" or explicitly exempted by the Tribal Council from the provisions of the Grazing Code.

17-8-2. RANGE MANAGEMENT UNITS; CARRYING CAPACITY. All grazing lands within the Mescalero Apache Reservation or otherwise under the administration of the Tribal Council shall be divided into Range Management Units. The boundaries of such Range Management Units shall be established by the Tribal Council. Lands may be withdrawn anytime from Range Management Units, by Tribal Resolution, when the Tribal Council determines that the land should be put to some other use having a higher value than grazing use or for any other reason.

- A. The Mescalero Apache Tribal Council shall designate geographical areas as Range Management Units by Tribal Resolution on an annual basis.
- B. With the technical assistance of the B.I.A., which shall utilize generally accepted methods in accordance with Title 25 of the Code of Federal Regulations, Parts 166.305 and 166.306, the Mescalero Apache Tribal Council shall establish a Range Management Plan which shall specify the carrying capacity for Range Management Units.
- C. Carrying capacity may be established by calculating the total usable forage of a particular parcel of land, calculating the forage demand, and determining the carrying capacity therefrom. Carrying capacity may also be calculated using some other scientifically based, generally accepted method as determined by the Tribal Council.
- D. No assignments to individual Tribal Members shall be made within established Range Management Units.
- E. A Range Management Unit may be closed to grazing, in whole or in part, by the Tribal Council, if the Council believes that such action is necessary to preserve, protect or restore the forage thereon. In the event of the necessity of such action to conserve range resources, the Tribal Council shall take such steps as are necessary to remove all livestock from the area thus closed to grazing and keep stock from grazing thereon until such time as the range has improved sufficiently to permit resumption of use.
- F. If the number of animal units that a Permittee is permitted to graze under Permittee's permit is reduced, adjustments shall be made in the fees charged for Permittee's range use. Except where there has been a revocation of a permit the Permittee for revocation of a permit pursuant to Section ____, due consideration will be given the Permittee to remove Permittee's livestock and improvements so as to cause the least amount of damage or inconvenience to the Permittee or his property.
- G. If, at any time, a Permittee feels that the carrying capacity of a Range Management Unit is set too high or too low, the Permittee shall have the right to request that an investigation be made. Carrying capacities shall then be adjusted in accordance with the findings of such investigation.
- H. A Range Management Plan review and ecological analysis shall be conducted every five (5) years staff and funding permitting.
- I. All changes shall be reflected in a revised Range Management Plan and shall be subject to approval by the Mescalero Apache Tribal Council.

17-8-3. GRAZING PERMITS.

Grazing Permits for each Range Management Unit will state the number of livestock to be grazed, the kind of livestock, the reason of use and fees due. After the effective date of this Code no livestock shall be allowed to graze upon any Range Management Unit except by authority of a Grazing Permit issued by the Mescalero Apache Tribal Council. Any livestock found grazing on any Range Unit as described in §17-8-1 that are not authorized by a bona fide Grazing Permit, shall be considered in trespass and action taken in accordance with §17-8-9. Agricultural Assignments are specifically included, subject to the provisions of §17-8-1 hereof.

17-8-4. ELIGIBILITY.

- A. Any enrolled member of the Mescalero Apache Tribe who has had his or her eighteenth (18th) birthday is eligible to hold a Grazing Permit under this Section. Any group or association of Tribal members who are organized with the approval of the Tribal Council will be eligible to hold a Grazing Permit under this Section.
- B. A Non-Member of the Mescalero Apache Tribe may, in the sole discretion of the Tribal Council, be eligible to hold a grazing permit. The Mescalero Apache Tribal Council may consider any factors, including potential remuneration, availability of forage, character of applicant, demand for grazing permits by Tribal members, or any other criteria deemed pertinent by the Tribal Council, when deciding whether to issue a grazing permit to a Non-Member.
- C. Any individual, group or association of individuals requesting a Grazing Permit on the Mescalero Apache Reservation must comply with all the following stipulations.
 - 1. Show proof of ownership by the person or groups of all livestock to be grazed under the Permit.
 - 2. Show, to the satisfaction of the Tribal Council, that he or she is physically, mentally and financially prepared to properly care for the livestock to be grazed. Including repairing & maintaining all improvements, i.e. corrals, fences, range water, etc.
 - 3. Present a certificate showing Brucellosis free cattle, and other papers showing disease free livestock.
 - 4. Show proof that he or she has a recognized registered brand recorded with the State of New Mexico Cattle Sanitary Board in his/her name or the name of the group or association, whichever the case may be, at the time of application.
 - 5. Present a Plan of Operation and Management in keeping with desired standards of range management that will meet with the approval of the Tribal Council.

17-8-5. GRAZING FEES.

- A. Grazing fees to be charged will be set by the Tribal Council prior to each permit period.
- B. Grazing fees charged may be based on a specified rule per head of livestock authorized to be grazed.
- C. The total grazing fee for any Range Management Unit, if fees are charged, will be equal to the rate per head times the authorized carrying capacity Range Management Unit, regardless of whether the Permittee has stocked the Unit to its authorized capacity.
- D. The established rate per head shall be charged all Permittees with the exception that, if at any time there is more than one applicant for any one Range Management Unit, the established rate per head will be used as a minimum bid. Applicants for the Range Management Unit will be allowed to bid competitively by sealed bid for the Permit, with award to the highest bidder.
- E. The grazing year shall be January 1 to December 31. Grazing fees shall be paid yearly.
- F. Fees not paid by January 1 will be delinquent as of that date. Failure to negotiate for the payment of grazing fees by January 1 will be cause for revoking the Grazing Permit.

17-8-6. DURATION OF PERMITS.

- A. Permits may be issued for a period of not less than one (1) year, nor more than ten (10) years. Unless otherwise specified on the face of the permit, it shall be assumed that any permit issued is for a period of ten (10) years. Any Permittee who has complied with the terms of his/her Grazing Permit and carried out the program set forth in the Plan of Operation for the Unit under Permit to

the satisfaction of the Tribal Council shall have the option to renew an expiring Permit. If a Permit is not renewed, the Permittee shall remove all livestock and other properties from the land immediately, or within such further time as allowed by the Tribal Council.

- B. Grazing Permits may not be reassigned or sub-permitted. Permits are not transferable except that in the event of the death of the Permittee, the Tribal Council may appoint, on the direction of the Tribal Court, a successor (who in his/her right is eligible to hold a Permit) to the deceased Permittee to act in his/her behalf until such time as the estate of the deceased shall be settled or the Permit shall be terminated. Upon settlement of the estate, the legal heirs will have the first priority to qualify for the permit. In the event that none of the heirs is awarded the Permit, a period of ninety (90) days will be allowed for the removal of all livestock and other properties owned by the estate of the deceased Permittee. Failure to remove said livestock or properties or make arrangements agreeable to the Tribal Council will be deemed an act of trespass.

17-8-7. RANGE IMPROVEMENTS.

- A. All Improvements placed on the Mescalero Apache Indian Reservation (the "Reservation") grazing lands shall become the property of the Mescalero Apache Tribe, unless definite arrangements to the contrary be made and so stated in the Grazing Permit. All permanent improvements established on the Reservation must have the approval of the Tribal Council before work is started.
- B. The Tribal Council shall have the authority to give a Permittee credit on the amount due for a grazing fee for improvements put on the Reservation by the Permittee. This shall include only improvements which will add to the value of the grazing land of the Tribe and shall not include improvements which are primarily for the convenience of the Permittee in handling his/her livestock. Any such agreement must be made prior to the beginning of the Permit period and such agreement shall be made part of the Grazing Permit. In case of competitive bidding for any Range Management Unit, no proposal for installation of improvements in lieu of grazing fees shall be acceptable as part of any bid. The highest bidder will be determined on the basis of a cash offer and any arrangements concerning allowance for improvements made will be negotiated after the highest bidder on a cash basis has been determined.
- C. Permittees who elect to bring cattle, horses or other livestock onto their respective land assignments are expected to take care of their land assignments. Overgrazing is prohibited. To ensure that overgrazing does not occur on a particular assignment, assignment holders are encouraged to seek technical assistance from the B.I.A. to determine carrying capacity for their particular assignment. Each tribal member is expected to take care of their fences, control noxious weeds, reseed disturbed sites and take other appropriate measures to ensure good pasture and range management.

17-8-8. REVOKING PERMITS. All Permits shall be revocable for the following reasons:

- A. Failure to follow the Plan of Operations as submitted as a part of the Application for Permit;
- B. Failure on the part of the Permittee to abide by the stipulations as submitted as set forth in the Permit;
- C. Failure to pay the grazing fees when due; or
- D. Failure to abide by the regulations and requirements made by the Tribal Council or the Tribal Executive Committee pursuant to this chapter.

17-8-9. PERMIT REVOCATION PROCEDURE. Whenever it shall come to the attention of the Tribal Executive Committee that the Grazing Permit of any Permittee can be revoked for one of the reasons set forth in §17-8-8, the Chairman of the Executive Committee shall initiate Permit revocation proceedings in the following manner:

- A. The Tribal Executive Committee, acting for and on behalf of the Tribe, and upon a majority vote, shall cause to be filed in the Tribal Court a Petition for Permit Revocation setting forth the following facts:
 - 1. The authority of the Tribe to petition for Permit revocation;
 - 2. The name of the Permittee;
 - 3. The description and terms of the Permit;
 - 4. The lands to which the Permit is attached; and
 - 5. The reasons for Permit revocation.
- B. The Petition shall be served upon the Permittee along with a Summons which shall require the Permittee to file an Answer within twenty (20) days.
- C. If no answer is filed within the time prescribed, upon Motion of the Tribe, the Tribal Court shall declare a Default and enter an Order of Permit Revocation. However, upon timely answer of the Permittee, the Tribal Court shall set the matter for hearing within sixty (60) days.
- D. At the Permit revocation hearing the Tribe shall bear the burden of proving the facts justifying a revocation of the Permit.
- E. The same right of appeal shall exist in Permit revocation matters as in all other cases before the Tribal Court.

17-8-10. TRESPASS.

- A. The following acts shall be prohibited and shall constitute trespass pursuant to this Section:
 - 1. The grazing upon or driving across Tribal lands, any livestock, without an approved grazing or crossing permit.
 - 2. The grazing of any livestock, within areas that are closed to grazing.
 - 3. The grazing of, or occupancy of, un-permitted or unbranded livestock.
 - 4. Introduction of diseased animals.
 - 5. Grazing livestock in excess of those numbers and kinds authorized on an approved livestock grazing permit.
 - 6. Allowing livestock to drift and graze on lands without an approved permit.
 - 7. Trespass of livestock onto or over an assigned or established Range Management Unit or the trespass of any livestock belonging to a Non-Member Indian or non-Indian onto tribal lands.
 - 8. Soil disturbance of any type including construction of roads, trails, new fence that are not provided for within the Range Management Unit Management Plan.
- B. Notice and Order to Remove
 - 1. If it has been found that a trespass has occurred or is currently occurring on Mescalero Apache lands, a report shall be made to the Tribal Conservation Office.
 - 2. When it has been determined that a trespass violation exists and the owner of the unauthorized trespass livestock is known, written notice shall be promptly served upon the alleged violator by an authorized agent of the Mescalero Apache Tribe, either personally or by certified mail, return receipt requested.
 - 3. The Notice shall set forth the act constituting the violation, the legal description of the

land where the livestock has been observed or currently are, and the verification of the brand or mark on the livestock, if any.

4. Notice shall instruct the alleged violator to remove the livestock ten (10) working days from receipt of the Notice. The notice will also indicate that the owner is being assessed a penalty in the amount of ten dollars (\$10.00) per head for each day of trespass or in an amount that may be subsequently imposed by the Tribal Council, in addition to the reasonable value of the forage consumed, property injured or destroyed, and will be charged for any expenses incurred for impoundment and disposal of the livestock. The location of impounded cattle will be at the Rodeo Grounds facilities or other location as specified. This Section shall also permit the Tribe to contract with an individual or a firm for the removal of the trespassing animals.
5. Notice shall also indicate that settlement of any assessed penalties shall take place before the owner takes repossession of the trespass livestock. Payment shall be made by cash, cashier's check, bank certified check, or money order ONLY.
6. If the violator does not comply with the Order to remove, the trespass livestock shall be impounded and disposed of in accordance with the procedures outlined in the following section.

C. Impoundment

1. Unauthorized livestock remaining on Tribal lands within a particular Range Management Unit over the time allotted shall be immediately impounded by authorized members of the Tribal Conservation Office, the Tribal Ranch enterprise or personnel from the B.I.A. Branch of Natural Resources Staff or a combination of any of the three working in close cooperation with the other.
2. Where the owner is unknown, or a known owner refuses to accept delivery of the Notice and Order to remove, the unauthorized livestock shall be immediately impounded.
3. When determined by authorized personnel that there is imminent danger that trespassing livestock will endanger public safety or damage tribal property, the livestock shall be immediately impounded.

D. Redemption And Notice of Public Sale.

1. Following the impoundment of the unauthorized livestock, a notice of public sale will be posted in various public places in the community of Mescalero for three (3) days immediately following the day of impoundment. If livestock from outside of the Reservation have come onto the Reservation and the owner of such livestock is unknown, the publication in a local newspaper of the Notice of Public Sale will need to take place.
2. The Notice shall describe the livestock to be sold and specify the date, time, place of sale, who will be conducting the sale, and the procedures by which the impounded livestock may be redeemed. Any known lien holders may also be served notice by law enforcement personnel, or by certified mail, return receipt requested.
3. The owner of the impounded livestock may redeem the animals any time prior to an established sale date, by submitting proof of ownership, and after the settlement of all applicable fees, costs, penalties, and other obligations that may have been incurred.
4. If the impounded livestock are not redeemed before the date of sale, they shall be sold to the highest bidder at public auction (either in Mescalero or at a public livestock barn) or may be used for public purposes such as its beef for feasts.
5. The net proceeds of any sale, after deduction of all impoundment and sale costs, shall be

deposited with the Tribal Treasurer and placed into the general fund, one-half for the benefit of the Conservation Office and one-half for the benefit of the Tribal Ranch enterprise.

17-8-11. PENALTIES; CIVIL FORFEITURE.

- A. Any person, group of persons, association of members, or corporation who violates any part of this chapter, and who is subject to the criminal jurisdiction of the Mescalero Apache Tribe, shall be deemed to have committed a criminal offense and shall be sentenced to imprisonment not to exceed fifty (50) days or a fine not to exceed Three Hundred Dollars (\$300.00), or both.
- B. The personal property used in connection with any trespass, as that term is defined in §17-8-10(A), including any vehicles, livestock trailers, portable pens or corrals, fencing, feed and the like, shall be subject to forfeiture. Any commissioned Tribal Conservation Officer or B.I.A. Law Enforcement officer may seize any such personal property and refer the matter to the Tribal Prosecutor who shall file a civil forfeiture action in Tribal Court.

17-8-12. ENFORCEMENT AND APPEALS

- A. Any person who violates, or interferes with any of the provisions of this Ordinance will be subject to those actions and penalties as prescribed herein as well as any other applicable federal enforcement actions including but not limited to those prescribed in Title 25 CFR, Part 11 and Part 166, *et. seq.*, and other Tribal laws and ordinances.
- B. Any decisions or actions taken pursuant to the above provisions may be appealed according to the provisions provided in the Mescalero Apache Tribal Code. All appeals must be in writing and in the proper format prescribed by the Tribal Court.

SECTION 9. SALE OF WOOD PRODUCTS.

17-9-1. DEFINITIONS.

- A. Tribal Member. A tribal member is defined as a person who is officially enrolled with the Mescalero Apache Tribe.
- B. Affiliate. As recognized by the Mescalero Apache Tribe, an affiliate is defined as a non-enrolled, non-Mescalero person, legally married to a member of the Mescalero Apache Tribe.
- C. Non-Member. A Non-Member is considered anyone who is neither a Tribal affiliate, nor an enrolled member of the Mescalero Apache Tribe.
- D. Penalties for violations of any part of this Code are noted in Part VI, Section D.

17-9-2. LAND ASSIGNMENTS. The B.I.A. Forestry shall notify assignees of Tribal lands prior to issuing permits for saw timber, house logs, utility poles, vigas, firewood, and Christmas trees, etc. Assignments shall be subject to forest, woodland, and range management needs as determined by tribal or federal authority.

Definitions of land assignments are contained in the Mescalero Apache Tribal Constitution.

17-9-3. FOREST PRODUCTS PERMITS.

- A. FREE-USE CUTTING WITHOUT A PERMIT.
 - 1. Eligible Parties.
 - Mescalero Apache Tribal Members.
 - 2. Products and Species.
 - a. Tribal members and affiliates may cut Teepee poles, Arbor brush and Christmas

trees without a permit.

b. Oak, Pine (including Pinon) and Fir may be cut for these purposes.

3. Restrictions, and Cutting Area.

a. Products cut under this authority shall be for the tribal member's personal, domestic use, and shall not be sold or exchanged for other goods or services.

b. These products may be cut in any forested area on the Reservation.

c. Spruce may not be cut for Christmas trees.

d. Christmas trees will be no taller than ten (10) feet. It is prohibited for Christmas trees to be topped from larger trees.

B. FREE-USE CUTTING WITH A PERMIT.

1. Eligible Parties.

Mescalero Apache Tribal Members. Refer to Part 1, A, of this Section.

2. Products and Species.

a. Tribal members are required to have a Permit in their possession to cut firewood, posts, poles and transplanting stock that is not limited, threatened or endangered.

b. Oak, Juniper, Pine (including Pinon), Fir, and Aspen may be cut for these purposes.

3. Restrictions, Definitions and Area.

a. Products cut under this authority shall be for the tribal member's personal, domestic use and shall not be sold or exchanged for other goods and services.

b. Tribal affiliates will not be issued a Permit of their own, but will have the privilege of cutting under their spouse's permit. Affiliates will not be allowed to utilize Permits without the presence of their spouses.

c. A Free-use Permittee or affiliate cannot be accompanied by a Non-Tribal member while cutting or hauling forest products.

d. No green standing tree shall be cut for firewood, unless otherwise authorized by the BA. Branch of Forestry. Firewood must be dead or down. Standing dead trees marked with yellow paint shall not be cut.

e. Six (6) cords of personal use firewood may be cut per year by each household. Permits will be issued at the Branch of Forestry on weekdays, exclusive of Federal holidays. The Branch of Forestry must be notified of all firewood cut and hauled. Permittees may phone the Branch of Forestry to report their cutting and hauling, or have their loads scaled at the Branch of Forestry Monday through Friday, between 8:00 A.M. and 4:30 P.M.

f. Free Use Permits shall be issued to tribal members that are at least sixteen (16) years of age and older. Exceptions to this policy shall be made only by the approval of the President (or Acting President) of the Mescalero Apache Tribe.

g. Permits will not be limited to a fuelwood cutting area. However, Permittees may request advice from the Branch of Forestry in locating fuelwood or tepee pole cutting areas.

4. Exceptions.

- a. Wood products to be used entirely within the Tribal Enterprises (except Mescalero Forest Products), Tribal Program Operations, and B.I.A. Agency Operations will be obtained on a Free-use Permit basis.
- b. Free-use Christmas Tree Permits may be issued to tribal enterprises, the schools, churches, P.H.S. Indian Hospital, Fish Hatchery, and the B.I.A. offices located within the boundaries of the Mescalero Reservation.
- c. Christmas trees will not be taller than sixteen feet (16'), except for churches, unless authorized by Forester.

C. PAID FOREST PRODUCTS PERMITS - TRIBAL MEMBERS & AFFILIATES.

1. Products and Species.

- a. The following products and species may be cut by tribal members and affiliates with a Paid Permit:
 - i. Pine, Pinon, Juniper, Oak and Fir firewood.
 - ii. Pine, Pinon, Juniper, Oak and Fir posts (eight inch maximum top and ten foot maximum length).
 - iii. Pine, Pinon, Juniper, Oak and Fir poles (five inch maximum top and sixteen foot maximum length).
 - iv. Pine and Fir sawtimber size material,* including house logs, utility poles or vigas.
 - v. Sawtimber size material is defined as any green or sound-dead material with a minimum top diameter of at least six inches (6") (inside bark), and at least sixteen feet (16') in length.
 - vi. Transplanting stock consisting of Pine, Fir, Aspen, and other species that are not limited, threatened, or endangered.
- b. Special exceptions will not be granted for Paid Permits. (Paid Permits will not be issued for Pinon, Oak or Juniper if not in conjunction with an approved woodland management project.)

2. Restrictions, Definitions and Area.

- a. Products cut under this authority can be sold or exchanged for other goods or services.
- b. All loads will be scaled by the Branch of Forestry. Once a scale slip is issued, Paid Permit forest products may be transported. The Permittee must possess a valid Permit and Scale Slip when transporting. Failure to produce these when stopped by authorities may result in prosecution.
- c. No green, standing tree shall be cut for firewood resale, unless otherwise authorized by the BA. Branch of Forestry. Firewood must be dead or down. Dead, standing trees marked with yellow paint shall not be cut.
- d. Permits may be limited to a specific cutting area. When a specific cutting area is not designated, a Permittee may request advice from the Branch of Forestry in locating areas for various products.
- e. The sale of Christmas trees will not be permitted, except for those individuals listed in D.2.b. of this Section.

- f. Cutting of Pinon, Juniper, and Oak will be only in areas designated by the B.I.A. for woodland management. Paid Permits for these species will be issued only in conjunction with such projects and subject to regulations relating to these projects.
- g. Each Permittee shall be allowed only one Permit at a time and limited to not more than five (5) cords per Permit when cutting Pinon, Juniper, and Oak.

3. Exceptions.

Paid Fuel Wood Permits for five (5) cords or less may be extended one (1) time for not more than ten (10) days due to adverse weather conditions, illness, or other extenuating circumstances by requesting such extension from the B.I.A., Branch of Forestry prior to the expiration of the Permit. Other Permits may be extended at the discretion of the Branch of Forestry.

D. PAID FOREST PRODUCTS PERMITS - NON-MEMBERS.

1. Products and Species.

- a. The following products and species may be cut under this category and only in areas designated by the B.I.A.
 - i. Pine (including Pinon) and Fir firewood.
 - ii. Pine and Fir posts. (eight inch maximum top and a ten foot maximum length).
 - iii. Pine and Fir poles (five inch maximum top and a sixteen foot maximum length).
 - iv. Pine or Fir Christmas trees. Refer to Section D.2.b. of this Section.
 - v. Pine and Fir sawtimber size material,* including house logs, utility poles or vigas. See E.1. of this Section (Timber Sale Policy).

*Sawtimber size material is defined as any green or sound-dead material with a minimum top diameter of at least six inches (6") (inside bark), and at least sixteen feet (16') in length.
 - vi. Transplanting stock consisting of Pine, Fir, Aspen, and other species which are not limited, threatened or endangered.

2. Restrictions, Definitions and Area.

- a. Products cut under this authority may be sold or exchanged for other goods or services. The only exception to this is that Christmas trees are for personal use only.
- b. Only Mescalero Federal and Mescalero tribal employees working on the Reservation full time are eligible for Christmas Tree Permits (one per family, personal use only). Other Non-Tribal persons are not eligible for Christmas Tree Permits. Trees will be cut from a designated area. Trees shall be no greater than ten feet (10') tall. It shall be prohibited for Christmas trees to be topped from larger trees. Spruce cannot be cut for Christmas trees.
- c. Standing timber to be harvested shall be designated by B.I.A. Branch of Forestry personnel. Firewood must be dead or down. Dead, standing trees marked with yellow paint shall not be cut.

- d. All Permittees issued Permits under this authority shall be inspected by the B.I.A. Branch of Forestry personnel, and may, at any time, be inspected by a Tribal Conservation Officer, or a B.I.A. Law Enforcement Officer.
- e. Permits issued under this authority shall be specific to the area and shall be accompanied by maps. Firewood cutting areas shall be posted and identified on the ground. Vehicle identification and helpers of Permittees shall be noted on the fact of Permits.

All loads will be scaled by the Branch of Forestry. Once a Scale Slip is issued, Paid Permit forest products may be transported. The Permittee must obtain a valid Permit and Scale Slip when transporting. Failure to produce these when stopped by authorities may result in prosecution.

Each Permittee shall be allowed only one Permit at a time and limited to not more than five (5) cords per Permit when cutting Pinon.

3. Exceptions.

Paid Permits for five (5) cords or less may be extended one time for not more than ten (10) days due to adverse weather conditions illness, or other extenuating circumstances by requesting such extension from the B.I.A., Branch of Forestry, prior to the expiration of the Permit. Other Permits may be extended at the discretion of the Branch of Forestry.

E. PAID FOREST PRODUCTS PERMITS - TIMBER SALES.

Policy. Mescalero Forest Products (MFP) has first rights to all timber sales on the Mescalero Apache Reservation, in accordance with the following conditions: All timber sales prepared by the B.I.A., including appraisal prices, will be presented to the Tribal Council for their determination of whether or not to accept said sale. If accepted, MFP has thirty (30) days after official written notification to accept or reject said sale. In the event that MFP rejects said sale, the B.I.A. will advertise the sale to the general public. Advertised sales shall be made under sealed bids, or at an oral auction, or under a combination thereof.

17-9-4. TIME RESTRICTIONS.

A. FREE USE PERMITS. A ninety (90) day Permit will be allotted to tribal members for all Free-use Permits.

B. PAID PERMITS.

- 1. Each Permittee shall be allowed only one (1) Permit at a time. Tribal members are limited to not more than five (5) cords on a Paid Permit for Pinon, Juniper, or Oak, and Non-Members are limited to this amount per Permit for Pinon.
- 2. Each Paid Permit shall have a time limit based on the volume and value of the Permit issued in accordance with this Section.

Volume	Member	Affiliate Non-Member
1 cord	2 days	1 day
2 cords	4 days	2 days
3 cords	6 days	3 days
4 cords	8 days	4 days
5 cords	10 days	5 days
10 cords	20 days	15 days

20 cords	40 days	30 days
50 cords	100 days	60 days
*250 cords	*	*

* Special firewood sales in excess of 250 cords. Time period is negotiable.

17-9-5. PRICES OF PAID PERMITS.

A. STUMPAGE PRICES. Prices for all wood products on Paid Permits are as follows:

1. Firewood (per cord).
 - a. The following rates apply for the cutting of Ponderosa Pine, Douglas Fir, White Fir and White Pine firewood:
 - i. Tribal Members \$7.00
 - ii. Non-Members \$15.00
 - b. Paid Permits may be issued for the cutting of Pinon Pine, Oak and Juniper firewood in conjunction with approved woodland management projects. In the event Permits are made available as such, the following rate will apply:

Tribal Members	\$15.00
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 - c. Paid Permits for Non-Members may be issued for the cutting of Pinon, Pine in conjunction with approved woodland management projects. In the event that such Permits are issued, the following rate will apply:

Non-Members	\$20.00
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 - d. Special firewood sales; excess of 250 cords per Paid Permit are Negotiable as appraised by the B.I.A.
2. Sawtimber, Houselogs, Utility Poles and Vigas.

Green and sound dead	\$10.00/MBF*
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(*Minimum stumpage price per thousand board feet)

Green and/or sound dead sawtimber will be appraised using the latest appraisal techniques and current price indexes. Stumpage rates for Permit timber sales issued to Mescalero Forest Products and resident tribal members will be established based on current rates contained in contract sales sole to Mescalero Forest Products.
3. Posts with an eight inch (8") maximum top and a ten foot (10') maximum length.

	<u>Tribal Members</u>	<u>Non-Members</u>
a. Dead	\$0.50	\$2.00
b. Green	\$0.50	\$5.00
4. Poles with a five inch (5") maximum top and a sixteen foot (16') maximum length.

The Firewood Permit rates will apply to poles.
5. Christmas Trees (for individual use only).

Maximum height - ten feet (10') \$10.00
6. Transplants. Ponderosa Pine, Douglas Fir, White Fir, White Pine, Aspen, Pinon. Any

species and plants not listed shall be preserved for tribal use. Prices listed are per linear foot.

	<u>Tribal Members</u>	<u>Non-Members</u>
Transplants	\$2.00/foot	\$3.00/foot
7.	All Paid Permits with a value of less than \$1,000.00 will be paid (in full) in advance. Paid Permits with a value greater than \$1,000.00 will require advance deposits and a cash performance bond.	
8.	Products not listed herein will be appraised by the B.I.A. in consultation with the Mescalero Apache Tribe. Comparative prices in the local market area may be used as guidelines.	

17-9-6. FEDERAL REGULATIONS AND TRIBAL ORDINANCES.

- A. ADMINISTRATIVE FEES. In accordance with §25 C.F.R., 163.19, a deduction of ten percent (10%) shall be made by the B.I.A. on each Permit issued that has a stumpage value in excess of \$1,000.00. No deduction will be made if the Permit value is less than \$1,000.00.
- B. STUMPAGE VALUE.
 - 1. Paid Permits issued to any individual, company or corporation shall not exceed a stumpage value of \$10,000.00 during one calendar year based on prices identified in Section V of this chapter.
 - 2. The total stumpage value of "Free-use Permits" issued to any tribal member shall not exceed a stumpage value of \$2,500.00 during one calendar year based on prices identified in this chapter.
- C. COMPLIANCE.
 - 1. Permittees must comply with USC, Title 18, §1853 and §1863, Tribal Ordinances, and the Tribal Code.
 - 2. Copies of Permits shall be forwarded to the Tribal Conservation Department and the B.I.A. Law Enforcement Department.
- D. VIOLATIONS. Any person who violates any Section of this chapter may be subject to a fine of up to \$5,000.00 and/or incarceration of up to three hundred sixty-five (365) days, and/or r loss of privileges for a period of three (3) years. A second violation shall result in complete loss of privilege.
- E. LAW ENFORCEMENT. Tribal Conservation Officers and Law Enforcement Officers shall have the right to stop and detain any vehicle transporting wood that cannot be properly accounted for in the form of a valid Permit and/or Scale Slip. Branch of the Forestry personnel will contact these authorities in the event a violation is suspected and will assist in the prosecution of violators.
- F. PERMIT FORMS. Form BA. 5-5331 is the form required to authorize cutting under the provisions of this chapter. Each Permittee is required to affix a Permit Sticker to his or her vehicle windshield issued by the Branch of Forestry.
- G. ISSUANCE OF PERMITS. The Agency Forest Manager is authorized to issue Permits under the policies and procedures established in this chapter.

17-9-7. FREE USE PERMITS. The following provisions shall operate in the event federal regulation of Indian timber operations is no longer deemed preemptive. Federal prescriptions applicable as of the date

of this Code: 25 USC §196; 26 USC §406-407; 25 USC §466; 25 C.F.R. 141.1, et seq. Those matters not addressed by Federal regulation shall be governed by the Tribe's regulatory scheme concerning timber:

- A. Free use cutting without Permits will be limited to Christmas trees, teepee poles and arbor brush; timber cut under this authority shall be for the tribal member's personal use, and shall not be sold or exchanged for other goods or service.
- B. Free Use Cutting Permits will be issued to tribal members by the President or a duly authorized representative for firewood, posts and corral poles, specific species and types of forest products and shall not be sold or exchanged for other goods or services. The total value of Free Use Permits issued for any individual shall not exceed Five Thousand Dollars (\$5,000.00) during one calendar year.
- C. Restrictions:
 - 1. All Permits, free use or paid, shall be issued for specific areas. Maximum two areas per Permit.
 - 2. Free Use Permits. Non-Tribal member spouse (as recognized by the Mescalero Apache Tribe) can operate under the Free Use Permits only when accompanied by the tribal member spouse. Exception to this policy will be made only by approval of the President of the Mescalero Apache Tribe.
 - 3. Free Use Permit shall be issued to tribal members that are seventeen (17) years or older. Exception to this policy will be made only by the approval of the President of the Mescalero Apache Tribe.
- D. Specifications: Wood products to be used entirely within the Tribal Enterprise Program and Operations will be procured on a free use basis and the limitations concerning the sale or exchange of forest products for other goods or services and stated in Subsection B above shall not apply.

17-9-8. PAID AND CHRISTMAS TREE PERMITS ISSUED BY THE PRESIDENT.

- A. Paid Permits will be issued to tribal members cutting materials for resale. Paid Permits issued to any individual shall not exceed Five Thousand Dollars (\$5,000.00) during one calendar year.
- B. Paid Permits will be issued to non-Indians and members of other tribes for: transplants, firewood, posts, poles, and sawlogs only under one of the following, unless authorized by separate ordinance.
 - 1. Standing trees that are dead and in danger of falling onto structures or roadways are to be marked with tree marking paint by Forestry personnel.
 - 2. Areas to be harvested shall be housing construction areas and road and utility rights-of-way.
 - 3. Firewood sale areas shall include logging units, mistletoe treatment and thinning areas and shall require prior tribal approval.
 - 4. Removal of forest products shall be in the best interest of the Tribe, and permitted only in the absence of specific requests for products available from tribal members.
 - 5. Values shall be determined by using the latest appraisal information on file.
 - 6. Harvesting of forest products by Wood Permits shall be consistent with good timber management practices.
 - 7. Non-Member Permittee activity shall be inspected daily by Forestry personnel.

8. Permits are issued to prevent the loss of forest resources resulting from fire, insects, disease, windthrow, or other natural or man-caused events.
 9. Permits for firewood issued to non-Indians shall be specific as to cutting area and shall be accompanied by maps. No permits shall be issued for the most accessible areas which shall be reserved for use by local residents.
- C. Paid Christmas Tree Permits shall be issued to non-Mescalero tribal employees and Federal employees working at Mescalero. Such Permits shall be limited to one (1) per family and shall allow cutting of either White Fir, Douglas Fir, or Pinon, but not other species of trees such as Ponderosa Pine, White Pine or Spruce. The size of tree cut shall be limited to that which is reasonable for use within the average home. Trees shall not be topped to make a Christmas tree.
- D. In accordance with C.F.R. 25 141.18, a deduction of ten percent (10%) for administrative expenses will be made by the B.I.A. on each Permit sold, whether to a tribal member or non-Indian.
- E. Restriction.
1. Each Permit shall have a time limit based on the volume and value of the Permit issued in accordance with this Section.

Volume	Member (days)	Non-Member (days)
1 cord	1	1
2 cords	2	2
3 cords	4	3
5 cords	10	5
50 cords	100	60

+50 cords (will be determined by Approving Officer)

2. Paid Permits, whether non-Indian, members of other Tribes or tribal members, shall be scaled prior to 4:30 P.M. Monday through Friday inclusive. Weekend hauling will not be permitted. Exceptions to this policy shall be explained on the Permit. An example would be special firewood areas approved by the Council.
3. Each Permittee shall be allowed only one (1) Permit at a time.
4. Permits shall not be transferred.
5. All paid Permits, whether non-Indian or Indian, will be subject to cutting limitations according to such scale schedules as the Tribe shall fix.

17-9-9. STUMPAGE PRICES. In each of the following categories stumpage prices shall be established by Ordinance annually:

- A. Standing trees that are dead and in danger of falling onto structures or roadways;
- B. Wood products that need to be removed to reduce slash accumulation as a fire hazard and breeding ground for insects;
- C. Salvage timber;
- D. Down and dead timber;

- E. Live or dead less than six months;
- F. Transplants;
- G. Specifications:
 - 1. Posts will be sold to a maximum of ten feet (10') in length;
 - 2. Prices listed for poles are to a maximum of twenty feet (20') in length. The prices charged for poles in excess of twenty feet (20') in length will be calculated from the average of stumpage rates being charged for timber on active timber sales on the Reservation.
 - 3. Permits for firewood issued to non-Indians will be specific as to cutting area and will be accompanied by maps. No Permits will be issued for the most accessible areas, which will be reserved for use by local residents.

SECTION 10. COMMUNITY IMPROVEMENT AREAS.

17-10-1. PURPOSE AND POLICY. The purpose of this Section is to improve health, safety, and living conditions on the Reservation by designating certain areas primarily for residential purposes in which all homes and other buildings constructed after the effective date of this Code shall meet high standards of construction, design and maintenance.

17-10-2. DESIGNATION OF COMMUNITY IMPROVEMENT AREAS.

- A. The Tribal Council, from time to time, shall designate areas within the Reservation which shall be known as "Community Improvement Areas."
- B. The following areas are hereby designated as Community Improvement Areas:
 - 1. Low Rent Housing Project Sections A and B;
 - 2. Code Enforcement Areas 1, 2 and 3;
 - 3. Code Enforcement Area 4;
 - 4. Code Enforcement Area 5;
 - 5. All residences at buildings owned by the Cattle Growers Incorporated located in Cow Camps 1 through 5, herein noted as Code Enforcement Area 6.

17-10-3. PERMISSIBLE USE.

- A. No building shall be hereafter constructed or subject to major alteration (as herein defined) in a Community Improvement Area except:
 - 1. A residence and related structures;
 - 2. A community building; and
 - 3. Such other buildings as may be authorized.
- B. For the purpose of this Code, a "major alteration" shall mean any repair, addition or improvement, the costs of which exceeds Five Thousand Dollars (\$5,000.00), or half the value of the structure prior to its alteration, whichever is lower.

17-10-4. MINIMUM LOTS AND DISTANCES.

- A. All lots in Community Improvement Areas shall not be less than five thousand (5000) square feet.
- B. No building shall be built closer than ten feet (10') from any lot line.
- C. Any dwelling or other building hereafter constructed or subject to major alteration in a Community Improvement Area shall contain the following minimum standards:

1. The minimum electric service and installation standards of 17-10-5 of this Section;
2. The minimum plumbing service and installation standards of 17-10-6 of this Section;
3. The yard maintenance standards of 17-10-7 of this Section;
4. The design and construction standards of 17-10-6 through 17-10-11 of this Section.

17-10-5. ELECTRICAL SERVICE IN COMMUNITY IMPROVEMENT AREAS.

A. Minimum Service Standards:

1. One circuit for each two hundred (200) square feet of floor area, minimum of three (3) per dwelling unit, with provision for at least one (1) additional future circuit;
2. Ceiling or wall fixtures in kitchen, halls, dining room, bedrooms, and, as necessary, in closets, attic and basement;
3. An outside fixture at each entrance and porch;
4. Convenience outlets in each room, with a minimum of three (3) in the living room, two (2) in kitchen and dining room, and two (2) in each other habitable room;
5. Special outlets, where required, for special equipment such as range, dryer and washer;
6. Ceiling or wall fixture in bathroom.

B. Convenience Standards:

1. Each ceiling fixture shall be controlled by a wall switch;
2. Bathroom fixtures shall be controlled by a wall switch, not readily accessible from shower or tub;
3. Switches shall not be placed behind doors;
4. Dwelling units containing more than one level of usable space shall contain a three-way switch conveniently located on each floor which controls at least one (1) light to illuminate stairs. This provision shall also apply to basements and attics;
5. Exterior fixtures shall be controlled by wall switches inside the entrance doors.

C. Installation Standards. All installations and repairs shall be made in full conformity with the requirements of the Electrical Code.

D. Maintenance. All service and fixtures subject to this Section shall be maintained at all times in good working order and repair.

17-10-6. PLUMBING DESIGN AND INSTALLATION STANDARDS IN COMMUNITY AREAS.

A. Minimum Service. All buildings subject to this Section shall be provided with:

1. An adequate supply of running water, safe for drinking. Whenever possible, connection shall be made to an approved community water system.
2. An adequate sewage disposal system. Whenever possible, connections shall be made to an approved community sewage disposal system.

B. Minimum Fixtures. All buildings subject to this Section shall contain the following fixtures, properly installed and in operating order:

1. One (1) water closet (toilet);
2. One (1) bathroom sink or lavatory;

3. One (1) bathtub or shower;
 4. One (1) kitchen sink.
- C. Installation Standards. All installations and repairs shall be made in full conformity with the requirements of the Plumbing Code.
- D. Maintenance. All service and fixtures subject to this Section shall be maintained at all times in good working order and repair.

17-10-7. YARD MAINTENANCE.

- A. The lots in a Community Improvement 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, refrigerators, gas heaters, or other appliances with latch doors shall be promptly removed. Stored operative appliances shall be made safe for children.
- B. To the extent practical, home owners in Community Improvement Areas shall encourage the growth of grass, trees, and shrubs by planting and watering their lawns and plants.
- C. Each home shall have an adequate outside container for trash.

17-10-8. DESIGN STANDARDS IN COMMUNITY IMPROVEMENT AREAS.

- A. Light and Ventilation. The objective of light and ventilation requirements is to insure satisfactory and healthful living conditions by providing natural light and ventilation in sufficient volume, proportioned to the size and intended use of rooms. Minimum requirements for habitable rooms shall be:
1. Total glass area. Ten percent (10%) of floor area of room, with exception of interior room.
 2. Ventilating area. Four percent (4%) of floor area of room with an exterior door.
- B. Space Requirements. Each dwelling shall be encouraged to contain not less than one (1) bathroom and three (3) habitable rooms, at least one of which shall be a bedroom. The minimum size of the rooms shall be:
1. Living Room 100 Square Feet
 2. Dining Room 50 Square Feet
 3. Kitchen 75 Square Feet
 4. Bedroom 75 Square Feet for Each Bedroom.

In homes with more than one bedroom, the size of the kitchen and living room will be increased by ten (10) square feet for each additional bedroom.

- C. Stairways:
1. Headroom. Main stairs in two-story dwellings shall have not less than six feet eight inches (6'8") of continuous clear headroom, measured vertically from front edge bead in a line parallel with stair riser. Basement stairs shall have not less than six feet four inches (6'4") of headroom.
 2. Width. Main stairways shall be not less than two feet nine inches (2'9") in width, clear of handrail. Basement stairs shall have not less than two feet six inches (2'6") clear treads.
 3. Depth. Main stairs shall be not less than nine inches (9") deep plus one and one-fourth inch (1 1/4") casing. Basement stairs shall be not less than nine inches (9") deep.

4. Risers. Risers in all stairs shall be not more than eight and one-fourth inches (8 1/4"); all risers heights to be the same in any one stairway.
- D. Habitable basement rooms shall comply with requirements for main floor rooms with respect to privacy, light and ventilation, floor area, ceiling height.
- E. Ceiling Heights.
 1. Main floor ceilings shall be not less than seven feet six inches (7'6") clear.
 2. Basement ceilings shall be not less than seven feet (7') clear under joists.

17-10-9. GENERAL STRUCTURAL REQUIREMENTS IN COMMUNITY IMPROVEMENT AREAS.

Any dwellings which are hereafter constructed or subject to a major alteration which are located in a Community Improvement Area shall meet the following general structural requirements.

- A. The objective of structural requirements is to obtain a well-built and durable dwelling which provides a weather-resistant shelter;
- B. 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 bad weather;
- C. Adequate precautions shall be taken to properly protect materials and construction from damage by ordinary use and by decay, corrosion, termites and other destructive elements;
- D. Workmanship shall be of a quality equal to a good standard practice and materials used shall be of kind and quality as to assure reasonable durability and economy of maintenance, all commensurate with the class of dwelling under construction;
- E. All members and parts of the construction shall be properly designed to carry all loads imposed without detrimental effect on finish or covering materials;
- F. Each member shall be correctly fitted and connected;
- G. The structure shall be adequately braced against lateral stresses; and
- H. Adequate precautions shall be taken to protect against fire and accidents.

17-10-10. MATERIAL AND EQUIPMENT REQUIREMENTS IN COMMUNITY IMPROVEMENT AREAS.

- A. Any dwelling which is hereafter constructed or subject to a major alteration which is located in a Community Improvement Area shall meet the following material and equipment requirements:
- B. Materials and equipment used in the construction of dwellings shall be used appropriately and shall be of a standard equal to good practice commensurate with the class of dwelling being erected.

17-10-11. CONSTRUCTION DETAILS IN COMMUNITY IMPROVEMENT AREAS. Any dwelling which is hereafter constructed or subject to a major alteration which is located in a Community Improvement Area shall be constructed in accordance with the following standards:

- A. Footings.
 1. Footings shall be designed for proper distribution of superimposed loads.
 2. The material used for footings shall be poured concrete or masonry blocks.
 3. Thickness of footings shall be determined in accordance with sound engineering practices, and in all cases not less than six inches thick.
 4. 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 in excess of one-half (1/2) the footing thickness.

B. Foundation Walls.

1. Walls supporting frame construction shall extend not less than eight inches (8") above adjoining outside finish grade and be exposed not less than six inches (6").
2. Walls of hollow masonry units, when supporting a sill plate, shall be capped with a minimum of four inches (4") of solid masonry or poured concrete. If poured concrete is used, it shall be reinforced with wire mesh. In lieu of said masonry or poured concrete, a continuous strip of galvanized expanded metal lathe one inch (1") less than width of wall may be installed in mortar joints over top course of block. Joints and voids in top course of block shall be completely filled with stiff mortar and finished flush with top of blocks.
3. Chimney foundations shall start at level of lowest adjacent foundation wall footings. Poured concrete foundations shall have a minimum thickness of six inches (6") for wooden frame structures less than two (2) stories high, with basement eight inches (8") minimum.

C. Wood Construction, Sills. Sills shall be anchored to foundation as follows:

1. Masonry. One-half inch by twelve inch (1/2" by 12") bolts;
2. Poured Concrete. One-half inch by six inch (1/2" by 6") bolts, spacing of anchor bolts not to exceed eight feet (8') and at least two (2) bolts to each sill piece. One standard nut and washer shall be installed on each bolt.

D. Floor Joists.

1. The minimum size of floor joists for dwellings sixteen feet (16') or less in width, without basement, shall be two inches by six inches (2" by 6"), with center support of masonry or poured concrete. Maximum spacing center to center shall be twenty-four inches (24").
2. The minimum size of floor joists for dwelling sixteen feet (16') or less with basement shall be two inches by eight inches (2" by 8"), with cross bridging of one inch by three inches (1" by 3"), double nailed at each end, center of span.
3. The minimum size of floor joists for dwellings more than sixteen feet (16') in width shall be two inches by eight inches (2" by 8").
4. Dwellings with basement which exceed sixteen feet (16') in width shall be provided with girder to support floor joists.
5. In all cases, spans shall not exceed recommended widths for type of material used.

E. Sub-floor.

1. Sub-floors shall be square edge or tongue and groove with ends cut parallel to and over center of joists.
2. Each board of sub-floor shall have bearing on at least two (2) joists, minimum thickness of sub-floor boards shall be twenty-five thirty-secondths inch (25/32"), and maximum width of six inches (6").
3. Plywood used for sub-flooring shall have a minimum thickness of one-half inch (1/2"). Plywood used for leveling purposes over other sub-floor shall have a minimum thickness of one quarter inch (1/4").

F. Studs, Braces.

1. Studs shall be continuous lengths without splicing.
2. Minimum size shall be two inches by four inches (2" by 4").
3. Maximum spacing shall be twenty-four inches (24"), center to center.
4. Corner supports shall be not less than three (3) two by fours (2" by 4") set to receive interior finish. Braces shall be installed at all external corners, except as follows:
 - a. If wood sheathing boards are applied diagonally, or
 - b. If plywood sheathing (Four feet by six feet (4' by 6') sheets) is nailed with 6 d nails, six inches (6") OC on all edges and one foot (1') OC at intermediate bearings.
5. Corner braces shall be installed as follows: Use one inch by four inches (1" by 4") set into outside face of studs, corner post, sill and plate, set at forty-five degrees (45°), extending from bottom of sill to top of plate. Use two (2) 8d nails at each bearing.

G. Window and Door Openings.

1. Inner studs on jambs shall extend in one piece from header to bearing and shall be nailed to outer stud.
2. Header for usual loading conditions shall be not less than:

a. Span 3' or less	one 2" by 4" on edge
b. Span 3' 6"	two 2" by 4" on edge
c. Span 4' 6"	two 2" by 6" on edge
d. Span 6'	two 2" by 6" on edge
e. Span 7' 6"	two 2" by 10" on edge
f. Span 9'	two 2" by 12" on edge
3. All header spans of more than four feet six inches (4'6") shall be of truss construction.
4. Door openings to laundry shall be a minimum of three feet (3') in width.

H. Plates.

1. Top plates shall be two inches by four inches (2" by 4"). Plate numbers shall be lapped at corners and intersecting partitions when plates are for piping or duct work, stock angle tie for plates and bearing for ceiling joists shall be installed.
2. Sole plates shall be two inches (2") minimum thickness and studs shall bear upon the plate on top of the sub-floor.

I. Position Framing.

1. Studs shall be continuous in length without splicing.
2. Corner rooms shall be framed to receive interior finish.
3. Top and sole plates shall be two inches (2") minimum thickness.
4. Top plate shall be lapped at outside walls and at bearing partitions.

J. Wall Sheathing.

1. Minimum thickness of wall sheathing shall be twenty-five thirty-secondths inches (25/32"), with maximum stud spacing of twenty-four inches (24") oc, or eleven sixteenthths

inches (11/16") with maximum stud spacing of sixteen inches (16") oc. Maximum width of wall sheathing shall be eight inches (8") with 2d nails, ten inches (10") with 3d nails, and twelve inches (12") with 4d nails.

2. Joints will be over center of stock and each board shall bear on at least two (2) studs.
 3. When plywood is used for sheathing, minimum thickness shall be five sixteenths inch (5/16") and maximum spacing of studs shall be sixteen inches (16") oc, with three eighths inch (3/8") plywood, stud spacing shall not exceed twenty-four inches (24") oc.
- K. Roof Sheathing. Minimum thickness of roof sheathing shall be twenty-five thirty-secondths inches (25/32"), with maximum rafter spacing of twenty-four inches (24") oc, or eleven sixteenths inches (11/16") with maximum rafter spacing of sixteen inches (16") oc. Maximum width of boards shall be six inches (6").
- L. Wood Siding. Acceptable siding grades shall be commensurate with quality and class of buildings.
- M. 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 one-fourth inch (1/4") away from sheathing. Nails shall penetrate wood at least three-fourths inch (3/4").
- N. Roof Covering.
1. Roof covering may be asphalt, wood shingles, galvanized sheet iron, or other similar suitable materials.
 2. Asphalt shingles shall be applied and nailed in accordance with the recommendations of the manufacturer.
 3. Wood shingles shall be edge grain, tapered shingles No. 1 grade.
 4. Exposure for single length shingles shall be:
 - a. 16 inches 3 3/4 to 4 inches;
 - b. 18 inches 4 1/4 to 5 1/2 inches;
 - c. 24 inches 5 3/4 to 7 1/2 inches.

SECTION 11. ZONING.

17-11-1. PURPOSE AND POLICY.

- A. The purpose of this Zoning Code is to promote the health, safety and economic welfare of the residents of the Reservation.
- B. This Section shall be implemented in order to achieve purposes which shall include, but need not be limited to the following:
 1. To protect the public health by preventing overcrowding and by segregating unsanitary and dangerous undertakings;
 2. To establish residential areas where families may live in privacy and in a wholesome environment;
 3. To increase public safety by reducing the possibilities of fire, traffic accidents and other dangers;
 4. To facilitate the planning and development of public facilities such as roads, school and utility services;

5. To prevent the deterioration of property values occasioned by random location of homes, stores and factories.

17-11-2. APPLICABILITY.

- A. The Tribal Council shall, from time to time, designate areas within the Reservation to which this Zoning Code shall apply.
- B. The following areas are hereby designated pursuant to paragraph A above: tribal land within the exterior Reservation boundaries.

17-11-3. ZONING DISTRICTS.

There shall be five categories of zoning districts:

1. Residential;
2. Commercial;
3. Industrial;
4. Institutional; and
5. Disposal.

17-11-4. DESIGNATION OF ZONING DISTRICTS.

- A. After this Zoning Code has taken effect, the Tribal Council shall designate on a map the location of the various zoning districts within the areas subject to this Code. Such resolution and map shall be posted at the Tribal Office with the notice that interested persons may appear at the next following meeting of the Tribal Council to voice any objections. After such meeting, the Tribal Council shall consider the testimony received and shall, within ten (10) days, post notice of the changes it has made or a notice stating that no changes have been made. If no appeal is filed under paragraph B, the resolutions shall take effect thirty (30) days following the posting of such notices.
- B. Any person aggrieved by the resolution of the Tribal Council designating the location of the zoning districts may appeal such resolution to the Tribal Council by filing a notice of appeal with the Secretary of the Tribal Council. The Tribal Council shall, at its next meeting, consider the zoning designation and make such amendments or changes, if any, as it deems proper. If the Tribal Council shall approve the resolution, in original or amended form, it shall go into effect on the date of such approval.

17-11-5. PERMISSIBLE USE IN RESIDENTIAL DISTRICT.

- A. Types of Use in General. No building or structure shall be used or erected in any residential district of any class, except for use as a place of human habitation or as a structure normally accessory thereto in the tradition of the Reservation.
- B. Lots and Distance Requirements. No building used as a place of human habitation shall be erected on a lot of less than five thousand (5000) square feet or closer than ten feet (10') from the boundary lines of the lot in question.

17-11-6. PERMISSIBLE USES IN COMMERCIAL DISTRICTS.

Types of Use. No building or structure shall be erected in a commercial district, except structures used in connection with any profession or any retail trade.

1. The term "profession" shall refer to persons trained as a doctor, attorney, dentist, newspaper editor, minister, or similar endeavor.

2. The term "retail trade" or business shall refer to grocery, hardware, drug, clothing or general merchandise stores; to hotels and motels, to gasoline service stations and automobile repair shops; to restaurants and movie theaters; to barber shops, cleaning establishments and similar personal service businesses; to handicraft establishments which employ three (3) or fewer paid employees (other than members of the owner's family); and businesses of similar character.
3. If, in the judgment of the Executive Committee, any use which would otherwise be permitted in a commercial district would create an extraordinary hazard to health or safety, such use shall be required to locate in an industrial district. The order of the Executive Committee under this Sub-section shall be subject to review by the Tribal Court.

17-11-7. PERMISSIBLE USES IN INDUSTRIAL DISTRICTS. No building or structure shall be erected in an industrial district except factories (other than handicraft establishments permitted in a commercial district); storage warehouses, slaughter houses, lumber yards; large scale laundries and cleaning establishments and similar businesses.

17-11-8. PERMISSIBLE USES IN INSTITUTIONAL DISTRICTS. No building or structure shall be erected in an institutional district except:

- A. A church and related structures;
- B. A community or recreation building;
- C. A police station, jail, library, fire house, or similar public service building; and
- D. All cemeteries shall be located in institutional districts.

17-11-9. PERMISSIBLE USES IN RECREATION DISTRICTS. Land in recreation districts shall be reserved exclusively for recreation uses including parks, playgrounds, recreation buildings and campsites, and outdoor dance and fairgrounds.

17-11-10. PERMISSIBLE USES IN DISPOSAL DISTRICTS. No building or structures may be erected on or within three (3) miles of a disposal area except as required for the sanitary disposal of garbage, trash, junk, and other waste products, including dead animals.

17-11-11. VARIANCES.

- A. Any person proposing to erect a structure not in conformity to this Zoning Code may apply to the Executive Committee in writing for a variance by stating the nature of the proposed structure. Application shall be posted in a public place, together with notification of when and where interested persons may appear before the Executive Committee to present objections. After holding a meeting as stated in the public notice, the Executive Committee shall decide in accordance with the standards of §17-11-4 whether or not to grant a variance in whole or in part.
- B. Any party aggrieved by the decision of the Executive Committee may appeal within ten (10) days to the Tribal Council by filing a notice of appeal with the Secretary of the Tribe. He shall be afforded opportunity to present his objections in person at the next Council meeting and the decision of the Council shall be final.
- C. A variance shall be granted only if the applicant can show:
 1. That the proposed use will not materially interfere with the object of this Zoning Code; and
 2. That unless such variance is granted, he will sustain severe hardship out of all proportion to the public gain achieved by compliance with the Code.

17-11-12. REMOVAL OF NON-CONFORMING USES.

- A. Scope. The Zoning Code shall not be construed to require the abandonment of existing uses or the removal of existing structures, except as herein provided.
- B. Definition. A non-conforming structure is one that is devoted to a use which is not permitted in the category or type of district in which it is located.
- C. Improvements. No person shall make any additions, improvements, or repairs to a non-conforming structure which requires a total investment in materials and labor (including his own) which is equal to or greater than fifty percent (50%) of the value of the premises prior to such addition, improvements or repairs. Permission to improve non-conforming structures which would otherwise violate this Section may be obtained in the same manner and under the same conditions as a variance. The Executive Committee or any person adversely affected may apply to the Tribal Council for an Order to enjoin any person acting in violation of this Sub-section.
- D. Destruction. If any non-conforming structure is more than fifty percent (50%) destroyed by fire, natural deterioration, or other causes, it shall no longer be used in conformity with this Code. The Executive Committee or any person adversely affected may apply to a Court of appropriate jurisdiction for an Order authorizing a removal of any structure used in violation of this Sub-section. The Court may, if it finds such action fair and just, order the cost of removal charged to the owner.
- E. Abandonment. Upon the application of the Executive Committee or any person adversely affected, the Tribal Council may authorize the removal of any non-conforming structure which has been permanently abandoned, and, if it finds such action fair and just, charge the cost of such removal to the former owner. If the former owner is not given five (5) days personal notice of the pending action, the Tribal Council shall, before issuing an Order pursuant to this Sub-section, make every reasonable effort to notify him. Such effort shall include:
 - 1. Mailing a notice of the pending action to the former owner at his last known address ten (10) days prior to the hearing; and
 - 2. Posting such notices conspicuously upon the structure sought to be removed, each to be accomplished at least ninety (90) days prior to the hearing under this Sub-section.

SECTION 12. FIRE PREVENTION.

17-12-1. PURPOSE AND POLICY.

- A. The purpose of this Section is the protection of persons and buildings and their contents from fire.
- B. This Section contains basic minimum provisions considered necessary for the safety of persons and the protection of their property. Compliance with this Code, proper precautions, and compliance with Reservation Building and Electrical Codes shall result in conditions basically free from the hazards of fire.

17-12-2. APPLICATION. This Section shall apply to all land on the Reservation under the jurisdiction of the Tribal Council. Cooperation of other governing bodies with jurisdiction over contiguous land areas will be sought in the enforcement of fire prevention practices.

17-12-3. ADMINISTRATION AND ENFORCEMENT. This Section will be administered and enforced by a designated appointee of the President.

17-12-4. FIRE PROTECTION.

- A. The construction of new buildings, residential, commercial and industrial, shall be in conformity with building, electrical and plumbing codes of the Reservation.

- B. Heating units shall be installed by qualified workmen in a safe and workmanlike manner. Fuel for heating units shall be stored safely and separately from the heating unit.
- C. Flammable materials shall be stored only in areas where there is no hazard of fire by contact with heating, cooking or electrical utilities. Storage of such material in closed areas where spontaneous combustion may occur is prohibited.
- D. Dwelling units shall be constructed with sufficient distance separating them to prevent the spread of fire from one unit to another.
- E. The burning of trash shall be performed in safe and proper receptacles only. The burning of fields shall be carried out with due consideration to weather conditions and with one or more persons in constant attendance; no field burning shall be done when the fire hazard rating is "HIGH" as rated by the BA. Branch of Forestry.

17-12-5. ITEMS NOT COVERED. All items not covered herein shall be governed by the recommendations of New Mexico State Fire Prevention Code, a copy of which shall be kept in the Building Code Supervisor's office.

SECTION 13. SOLID WASTE.

17-13-1. DEFINITIONS. For the purposes of this Section, the following terms, phrases, words and their derivatives shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely discretionary.

- A. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind. This definition shall also apply to Sections 14 and 15 of this Chapter.
- B. "Garbage is putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.
- C. "Refuse" is all putrescible and non-putrescible solid waste (except body waste), including garbage, paper, cardboard, tin cans, yard clippings, leaves, wood, glass and all such similar items.
- D. "Debris is defined as all waste building material, bricks, concrete blocks, trees, tree limbs, old car bodies, and other matter which is commonly known as debris.

17-13.2. SANITATION DEPARTMENT. The United States Public Health Services and Sanitation Department is hereby charged with the enforcement, inspection, and execution of this Section of the Code, together with other lawful duties imposed upon it by the President.

17-13-3. ACCUMULATION

- A. Accumulation Prohibited. No person shall permit to accumulate upon the premises owned, leased or occupied by him any garbage or refuse, except in approved covered containers. This provision shall not apply to compost piles.
- B. Penalty. Any unauthorized accumulation of garbage, refuse or debris is hereby declared to be a nuisance and is prohibited. Failure to remove any existing accumulation of garbage, refuse or debris within fifteen (15) days after notification from a proper authority shall result in the issuance of a citation. The fine for receiving the first citation shall be Ten Dollars (\$10.00), plus removal costs if removed by the Tribe, and shall increase Ten Dollars (\$10.00) for each citation thereafter. A new citation will be issued every five (5) days until removal. Complaints shall be issued by Reservation Law Enforcement Officers, safety officers, sanitation personnel of U.S. Public Health Service, Mescalero Agency and Mescalero Apache Tribe, or Tribal Housing Personnel.

17-13-4. NO DUMPING. No person shall throw, place, dump nor dispose of any debris on any street, gutter, sidewalk, or alley, gullies, arroyos, canyons and hillsides.

17-13-5. DEAD ANIMALS. No person shall cause or permit to remain upon any property, private or public, any dead animals, vegetable or mineral matter or any composition or residue thereof, which is an unsanitary condition or of a nature to be injurious to public health.

17-13-6. NO LITTERING. No person shall cast, place, sweep or deposit anywhere within the Reservation any garbage, refuse or debris in such a manner that is may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway or other public place or into any occupied premises within the Reservation.

17-13-7. RESPONSIBILITY. Any person who declines to accept and pay for the garbage and refuse collection services of the Tribe shall dispose of such garbage and refuse as may be accumulated on his premises at some approved disposal point.

SECTION 14. LIQUID WASTE.

17-14-1. DEFINITIONS. For the purposes of this Section, the following words and phrases shall have the meanings respectively ascribed them by this Section:

- A. "Nonacceptable Wastes." The following wastes:
1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150° F);
 2. Any water or waste having a five-day biological oxygen demand which may contain more than one thousand (1,000) parts per million by weight as averaged during any twelve (12) hour period.
 3. Any gasoline, benzine, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
 4. Any garbage that has not been properly shredded;
 5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, grit, brick, cement, onyx, carbides or any other interference with the proper operation of the sewage works; or any water or waste having a pH lower than five and one half (5 1/2) or higher than nine (9) or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the sewage works;
 6. Any water or waste containing a toxic or poisonous substance in sufficient quantities to injure or interfere with sewage process, constituting a hazard to humans or animals or creating any hazard in the receiving waters of the sewage treatment plant;
 7. Any water or wastes containing suspended solids of such character or quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
 8. Any noxious or malodorous gas or substance capable of creating a public nuisance.
- B. "Sanitary Sewage." The waste from water closets, urinals, lavatories, sinks, bathtubs, showers, household laundries, cellar floor drains, bars, soda fountains, cuspidors, refrigeration drips, drinking fountains and any other waterborne waste not constituting an industrial waste.
- C. "Tribe." The Mescalero Apache Tribe.
- D. "Reservation." That land enclosed by the external boundaries of the Mescalero Apache Reservation.

E. "Tribal President." The President of the Mescalero Apache Tribe or his authorized representative.

17-14-2. LIQUID WASTE.

- A. The Tribal Sanitation Department shall execute the provisions of this Section and shall act as the President's authorized representative.
- B. Except where otherwise provided, no person shall maintain within the Reservation any privy, privy vault, septic tank, cesspool or other facility intended for use for the disposal of sewage. Where a public sanitary sewer is not available within the Reservation or in any area under the jurisdiction of the Tribe, the building sewer shall be connected to a private sewage disposal system complying with the provisions and recommendations of the New Mexico Environmental Improvement Board. Such private sewage disposal system shall be constructed, maintained and operated at all times in a sanitary manner. At such time as a public sanitary sewer becomes available to the property served by a private sewage disposal system, a direct connection shall be made to the public sanitary sewer in accordance with the provisions of this Section and any septic tank, cesspool or similar sewage disposal facility shall be abandoned and filled with suitable material. A copy of the State Liquid Waste Disposal Regulations shall be kept at the Tribal Sanitation Department.

17-14-3. PERMIT REQUIRED. It shall be unlawful for any person to open, uncover or in any manner make connection with any sewer main or line in the Reservation without first obtaining a written permit therefor from the Tribal Sanitation Department.

17-14-4. APPLICATION. The Application for said permit shall be in writing and shall contain the following information:

- A. Name and address of applicant;
- B. Name and address of owner of the premises where said connection is to be made, or drain or line is to be laid;
- C. Location of the proposed connection, drain or sewer pipes;
- D. Statement as to the type of connection and type of materials to be discharged into the sewer; and
- E. Statement as to whether said connection is to be made to the storm sewer or the sanitary sewer.

17-14-5. ISSUANCE OF PERMIT. If the proposed connection does not violate any provision herein and does not violate any other ordinances of the Tribe, the Tribal Sanitation Department shall issue a Permit for such connection. Such Permit shall contain all information contained in said Application and shall specify the type and kind of grease and sand traps to be used.

17-14-6. TAPPING FEE. At the time of filing the Application, the applicant shall pay a tapping fee, at rates to be specified for sewer connections respectively to on-Reservation or off-Reservation property. The Tribal Sanitation Department, subject to the approval of the President, shall set these fees.

17-14-7. CONSTRUCTION OF SEWERS. Any user of the sewer system, either inside or outside of the Reservation boundary, must build his own sewer line if there is no line available for him to connect with. All connections to the Tribe's sewer system must be made by a licensed plumber, subject to the supervision and inspection of the Tribal Sanitation Department, and in compliance with the Tribal Plumbing Code.

17-14-8. DISCHARGE OF NON-ACCEPTABLE WASTES PROHIBITED. The discharge of non-acceptable wastes into the tribal sewer system, whether directly or indirectly, is prohibited, and where investigation reveals the presence in the system of non-acceptable wastes emanating from any lot, land, building or premises, the owner, lessor, renter or occupant of such lot, land, building or premises shall be,

at his own expense, required to treat, neutralize or in other ways prepare the noxious substance therein to the satisfaction of the Tribal President in order to convert the same into acceptable wastes.

17-14-9. USE OF GREASE, OIL, SAND, ETC., INTERCEPTORS. Grease, oil and sand interceptors shall be provided when, in the opinion of the Tribal Sanitation Department, they are necessary for the proper handling of any liquid water containing grease in excessive amounts or any flammable waste, sand or other harmful ingredients; except that such interceptor shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Tribal President, and shall be located as to be readily and easily accessible for cleaning and inspection.

17-14-10. CONTROL MANHOLE REQUIRED. When required by the Tribal Sanitation Department, the owner of any property served by a building sewer carrying industrial waste shall install a suitable control manhole in the building sewer to facilitate observation and sampling of the waste. Such manhole, when required, shall be approved by the Tribal Sanitation Department. The manholes shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

17-14-11. ABANDONMENT OF CONNECTION. No person shall abandon any building connection without first obtaining a written permit therefor. Such building connection shall be effectively sealed with a vitrified clay stopper inserted in the bell of the sewer extending to the property line, which stopper shall be jointed as directed by the Tribal Sanitation Department.

17-14-12. INTERFERENCE WITH TRIBAL EMPLOYEES PROHIBITED. No person shall in any way interfere with the employees of the Tribe in any discharge of their duties, either in the tapping of any sewer pipe, main or lateral. No person shall dig up or cause to be dug up any street or alley in the Reservation for the purpose of connecting with the sewer system of the Reservation, without first obtaining a Permit, and no person having a Permit shall dig up any portion of any street or alley of the Reservation for the purpose of connecting with the sewer system of the Tribe and fail or neglect to place the street or alley in its original condition.

17-14-13. DEPOSIT OF UNSANITARY WASTES ON PROPERTY PROHIBITED. No person shall deposit or permit to be deposited in any unsanitary manner upon public or private property within the Reservation, or within any area within the jurisdiction of the Tribe, any human or animal excrement wastes.

17-14-14. DEPOSIT OF UNTREATED INDUSTRIAL WASTE INTO NATURAL OUTLETS PROHIBITED. No person shall discharge into any natural outlet within the Reservation, or any area within the jurisdiction of the Tribe, any sanitary sewer industrial waste or other polluted waste, except where suitable treatment has been provided in accordance with authorization from the Tribe.

17-14-15. DAMAGING, TAMPERING WITH SEWERS PROHIBITED. No person shall maliciously, willfully or negligently break, damage or destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the Reservation sanitary sewer system.

17-14-16. RATES AND CHARGES FOR USE OF SEWERS. Rates and charges for sewer use of the Reservation sewer system shall be established by the Sanitation Department.

17-14-17. BILLING, PAYMENT. The sewer charges levied pursuant to this Section shall be payable monthly and shall be added to and made a part of the monthly water bill of the various properties in the Reservation. Non-Tribal properties shall pay monthly in advance, or as provided by agreement, and if the same are not paid within ten (10) days thereafter, a penalty of five percent (5%) of such charge shall be added to such bill.

17-14-18. COLLECTION OF UNPAID AND OVERDUE CHARGES. Each sewer charge levied pursuant to this Section shall create an additional lien which shall attach to the building and personal property on the premises to which the sewer line runs. If the premises are leased, rented, or occupied by a person other than the lessor, this fact does not exempt such person's on-premises personal property from

attachment and execution. The tribal attorney shall be authorized, when directed by the President, to proceed in Civil Court to enforce the execution of the lien so attached. If, in individual cases, full satisfaction of the debt is not perfected, the Tribal Police shall be authorized to sell any of the items of personal property enumerated in the Tribal Court's Order. Further, the Council is authorized to reassign the property encumbered, to be subject to the lien.

17-14-19. DISPOSITION AND USE OF FUNDS. The charges and rentals authorized by this Section shall be deposited in the Tribal Treasury for general operation and maintenance obligations of the Tribe.

17-14-20. DISCONTINUANCE OF SEWER SERVICE. In addition to the remedies provided in this Section, the Tribe may, without notice, discontinue sanitary sewer service or water service to any premises as to which the sanitary sewer system charges are delinquent for a period of ten (10) days. The Tribe may, without notice, discontinue the sanitary sewer service to any premises discharging non-acceptable wastes into the sanitary sewer system.

17-14-21. ADOPTION OF RULES AND REGULATIONS GOVERNING SEWERS. The Sanitation Department shall promulgate rules and regulations as necessary. The President shall have the right to review them at any time and to rescind, modify, or amend them.

SECTION 15. INDUSTRIAL WASTE.

17-15-1. TITLE. This Section shall be known as the Industrial Waste Act of the Mescalero Apache Tribe.

17-15-2. DEFINITION OF TERMS.

- A. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter by Standard Methods procedure in five (5) days at twenty degrees centigrade (20o C) expressed in milligrams per liter (mg/l).
- B. "COD" (denoting Chemical Oxygen Demand) is a measure of the oxygen-consuming capacity of organic and inorganic matter present in waste water as milligrams per liter (mg/l).
- C. "Normal Domestic Wastewater" shall mean waterborne wastes normally discharging from the sanitary conveniences of buildings (including apartment houses and hotels), office buildings, factories and institutions, free from storm surface water and industrial wastes. Normal domestic wastewater shall mean "normal" for Mescalero, New Mexico.
- D. "Garbage" shall mean solid wastes from the preparation, cooking and dispensing of food, and from the handling, sorting and sale of produce.
- E. "Industrial Liquid Wastes" shall mean all water borne solids, liquids or gaseous wastes resulting from any industrial, manufacturing or food processing operation or process, or from the development of any natural resource, or any mixture of these with water or domestic sewage as distinct from normal domestic sewage. Industrial manufacturing processes shall include, but are not limited to: ordinance and accessories; food and allied products; tobacco manufactures, textile mill products; apparel and other finished products made from fabrics and similar materials; lumber and wood products, except furniture; furniture and fixtures; printing, slaughter house wastes, publishing, and allied industries; chemicals and allied products; petroleum refining and related industries; rubber and miscellaneous plastics products; leather and leather products; stone, clay, glass and concrete products; primary metal industries; fabricated metal products, except ordinance, machinery, equipment and supplies; transportation equipment; professional, scientific and controlling instruments; photographic and optical goods; watches and clocks; miscellaneous manufacturing industries.
- F. "Interference With Any Wastewater Facility" shall mean any condition or combination of conditions which cause degradation of the operational efficiency of a wastewater facility.
- G. "Trap" is a device for retaining sand, silt, grit mineral material, petroleum solvent, grease or oil,

by gravity differential separation from wastewater and of a design and capacity approved by the Mescalero Apache Tribe.

- H. "pH" shall mean the logarithm (base 10) of the reciprocal of the hydrogen ion concentration of a solution.
- I. "Public Sewer" shall mean a sewer in which all owners of abutting properties shall have equal rights and is controlled by public authority.
- J. "Sanitary Sewer" shall mean the public sewer portion of a wastewater facility which transports wastewater and to which storm, surface and ground water are not intentionally admitted.
- K. "Settleable Solids" means those solids which settle during a preselected period of time as expressed in milliliters per liter of sample.
- L. "Standard Methods" shall mean the laboratory procedures set forth in the latest edition, at the time of analysis, of "Standard Methods for the Examination of Water and Wastewater," as prepared, approved, and published jointly by the "American Public Health Association" and "American Water Works Association" and the "Water Pollution Control Federation."
- M. "Storm Sewer" shall mean a sewer which carries storm and surface waters and drainage, but excludes wastewater and polluted industrial wastes.
- N. "Unpolluted Process Water" shall mean any water or waste containing none of the following: free or emulsified grease or oil; acid or alkali, phenols, or other substances imparting taste and odor to receiving water; toxic substances in suspension, colloidal state or solution; and noxious or odorous gases.
- O. "Wastewater" shall mean the used water of a community. Such used water may be a combination of the liquid and waterborne wastes from residences, commercial buildings, industrial plants and institutions.
- P. "Wastewater Facilities" shall mean the structures, equipment, and processes required to collect, transport and treat domestic industrial wastes and dispose of the effluent.
- Q. "Wastewater Treatment Works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with waste treatment plant or wastewater treatment plant.
- R. Unless its meaning shall clearly indicate otherwise, "The Tribe" shall mean the Tribal Sanitation Department or other appropriate agency of the Tribal Executive Branch.
- S. The "Governing Body" shall mean the Tribal Sanitation Department.

17-15-3. RESTRICTIONS. No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

17-15-4. STORM WATER. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the governing body of the Mescalero Apache Tribe. Industrial cooling water or unpolluted process waters may be discharged, on approval of the governing body of the Mescalero Apache Tribe, to a storm sewer, or natural outlet.

17-15-5. LIQUID OR WASTES PROHIBITED. No person shall discharge or cause to be discharged any of the following described liquids or wastes to any public sewers:

- A. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;
- B. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity,

either singly or by interaction with other wastes, to injure or interfere with any wastewater facility, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment works, including, but not limited to cyanides in excess of two (2) mg/1 as CN in the wastes as discharged to the public sewer;

- C. Any herbicides and pesticides;
- D. Any waters or wastes having a pH lower than (5.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater facility;
- E. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facility such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- F. Any amount of the following heavy metals: Antimony, arsenic, barium, beryllium, bismuth, boron, cadmium, chromium (Hexa), chromium (Tri), cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel, rhenium, selenium, silver, strontium, tellurium, tin, uranyl ion, and zinc.

Dilution of toxic materials and heavy metals in lieu of removal is not acceptable.

17-15-6. DISCHARGE PROHIBITED. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the governing body of the Mescalero Apache Tribe that such wastes can harm the wastewater facility, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the governing body of the Mescalero Apache Tribe will give consideration to such factors as the materials of construction of the sewers, nature and capacity of the wastewater facility, degree of treatability of wastes in the wastewater treatment works and other pertinent factors. The substances which must be considered include, but are not limited to, the following:

- A. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150° F); sixty degrees Centigrade (60° C).
- B. Any water or waste containing fats, grease, wax, or oils, whether emulsified or not, in excess of one hundred (100) mg/1 or containing substances which may solidify or become viscous at temperatures between thirty-two degrees Fahrenheit (32° F) and one hundred thirty-two degrees Fahrenheit (132° F) and one hundred fifty degrees Fahrenheit (150° F); and zero degrees Centigrade (0° C) and sixty-five degrees Centigrade (65° C).
- C. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder larger than those normally manufactured and sold for residential and non-commercial use will not be permitted without specific review and approval by the governing body of the Mescalero Apache Tribe.
- D. Any waters or wastes containing strong acids, iron pickling wastes, or concentrated plating solutions cannot be discharged to the wastewater facility unless completely neutralized and approved by the governing body of the Mescalero Apache Tribe.
- E. Any waters or wastes containing reducing substances of an organic or inorganic nature, toxic or nontoxic, which exert an immediate chlorine demand will not be discharged into the wastewater facility if discharge of such agents will prevent the achievement of an adequate chlorine residual in the effluent of the wastewater treatment works.

- F. Any waters or wastes containing phenols or other taste or odor-producing substances in concentrations exceeding limits established by the governing body of the Mescalero Apache Tribe after treatment of the composite sewage to meet the requirements of the state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
- G. Any radioactive wastes or isotopes of such having a half-life or concentrations that exceed limits established by the governing body of the Mescalero Apache Tribe.
- H. Any waters or wastes having a pH in excess of 9.5.
- I. Materials which exert or cause:
 - 1. Unusual concentrations of inert suspended solids (such as, but not limited to Fullers earth, lime slurries and lime residues or of dissolved solids such as, but not limited to sodium chlorine and sodium sulfate).
 - 2. Excessive discoloration (such as, but not limited to dye wastes and vegetable tanning solutions).
 - 3. Unusual chemical oxygen demand, or biochemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works.
 - 4. Slugs or shocks constituting an unusual volume of flow or concentration of wastes which will disturb the normal functioning of the wastewater facility.
- J. Wastes or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment works employed, or are amenable to treatment only to such degree that the effluent cannot meet the requirements of agencies having jurisdiction over discharge to the receiving waters.

17-15-7. WATER OR WASTES DISCHARGED. If any water or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 6 of this Code, and which in the judgment of the governing body of the Mescalero Apache Tribe may have a deleterious effect upon the wastewater facilities, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the governing body of the Mescalero Apache Tribe may:

- A. Reject the wastes;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers; or
- C. Require control over the quantities and rates of discharge.

If the governing body of the Mescalero Apache Tribe permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the governing body of the Mescalero Apache Tribe and State of New Mexico and to the requirements of all applicable codes, ordinances and laws.

17-15-8. TESTING. Testing of an industrial waste will be performed at least twice a year or whenever found necessary by the governing body of the Mescalero Apache Tribe. The person discharging the waste shall be liable for payment of all costs arising from the testing of the industrial waste.

17-15-9. TRAPS. Grease, oil and sand traps shall be provided when, in the opinion of the governing body of the Mescalero Apache Tribe, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such traps shall not be required for private living quarters or dwelling units. All traps shall be of a type and capacity approved by the governing body of the Mescalero Apache Tribe and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil traps shall be installed in all new

filling stations, garages, restaurants and other new facilities wherein heavy discharge of grease and oil is to be expected.

17-15-10. MAINTENANCE. Where preliminary treatment or flow-equalizing facilities are provided for any industrial liquid wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

17-15-11. MANHOLE, METER REQUIREMENTS. When required by the governing body of the Mescalero Apache Tribe, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, constructed in such a manner as to prevent infiltration of ground and surface waters, and should be constructed in accordance with plans approved by the governing body of the Mescalero Apache Tribe. The manhole shall be installed so as to be safe and accessible at all times.

17-15-12. MEASUREMENTS, TESTS, ETC. All measurements, tests, and analysis of the characteristics of waters and wastes shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater published jointly by the American Public Health Association and American Water Works Association and the Water Pollution Control Federation, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. The control manhole shall be located so that sampling of the industrial waste will be performed before discharge into the public sewer system. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the wastewater treatment works and to determine the existence of hazards to life, limb and property. The particular analysis involved will determine whether a twenty-four (24) hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, COD, BOD and Settleable Solids analyses are obtained from twenty-four (24) hour composites of all outfalls, whereas pH is determined from periodic grab samples.

17-15-13. RATE SCHEDULE. The governing body of the Mescalero Apache Tribe shall take necessary steps to establish a rate schedule for sewer service that assures an equitable system of cost recovery. The purpose hereof is that the industrial users shall pay for the costs incurred by the governing body of the Mescalero Apache Tribe in the construction, operation and maintenance of that portion of the wastewater facilities related to industrial wastes.

17-15-14. COST RECOVERY. The cost recovery system shall satisfy the following conditions:

- A. The apportionment of costs must take into consideration the individual industrial user's contribution as related to the total waste load, taking into account the volume and strength of all discharges.
- B. The costs to be considered should include, but are not limited to:
 1. Amortization of the applicant's indebtedness for the cost of the treatment facilities (plant and interceptors);
 2. Operation and maintenance of the treatment facilities;
 3. Any additional costs which are necessary to assure adequate treatment on a continuous basis.
- C. Substantial prepayment of the capital investment or other financial commitments will be required from each industry that contributes 30% or more of the total volume or strength of the waste load to be treated by the project.

17-15-15. INDUSTRIAL CHARGE. A charge will be assessed against persons discharging industrial liquid wastes which are of a greater strength and volume than normal, untreated domestic wastewater.

Normal, untreated domestic wastewater is defined as having a maximum yearly average biochemical oxygen demand and chemical oxygen demand not in excess of 200 milligrams per liter and 400 milligrams per liter, respectively. The same sewage is considered to contain settleable solids not in excess of 5.0 milligrams per liter. The industrial charge will be calculated with a formula acceptable to the Mescalero Apache Tribal Council and adopted by resolution.

17-15-16. PENALTY. Every person convicted of a violation of this Section shall be punished by a fine of not more than Three Hundred Dollars (\$300.00) or by imprisonment for not more than ninety (90) days, or both, and each day this Code is violated shall constitute a separate offense. The conviction and punishment of any person for a violation shall not excuse or exempt such person from the payment of any fee due or unpaid at the time of such conviction and nothing herein shall prevent a criminal prosecution of any violation of any other provisions of this Code. All remedies prescribed or liens created hereunder or under the provisions of the law for collection and enforcement of the fees shall be cumulative and the use of one or more remedies by the Mescalero Apache Tribe shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Code or any liens created by the law. The fees fixed by this Section shall be a lien in favor of the Mescalero Apache Tribe upon the personal property of the person used in connection with the sewer use which gave rise to the fee and such lien shall be imposed, collected, enforced, and paid as provided by the law. No property of any person shall be exempt from levy and sale if execution is issued for the collection of a judgment for any fee imposed by this Section.

17-15-17. PLUMBING AND BUILDING ACT. This Section shall be in addition to the existing Liquid Waste Act and the Plumbing and Building Act. Wherever this Section shall conflict with the existing ordinances, this Section shall govern.

17-15-18. INVALIDITY. If any part or parts or application of any part of this Section is held invalid, the Mescalero Apache Tribe hereby declares that it would have passed the remaining parts of this Section even if it had known that such part or parts or application of any part thereof would be declared invalid and it is the intent of the Mescalero Apache Tribe that the unaffected remainder of the Section continue in force. Because of the fact the Mescalero Apache Tribe does not now have an adequate industrial sewer use code, this Section is necessary for the preservation of the public health, peace and safety of the inhabitants of the Reservation, and is hereby declared to be an emergency measure on the ground of urgent public need.

17-15-19. CONSTANTS FEE COSTS. A Method of Derivation of Monetary Constants will be used in assessing cost for Industrial Wastewater Treatment for EPA Project and maintenance costs related thereto.

SECTION 16. PASSAGE ACROSS INACCESSIBLE ASSIGNMENTS

17-16-1. DESIGNATION OF INACCESSIBLE ASSIGNMENTS. An assignment of land which does not abut a designated federal, state or tribal road, and through which a designated federal, state or tribal road does not run, be and hereby is designated as a "Inaccessible Assignment".

17-16-2. RIGHT OF PASSAGE. The holder of an Inaccessible Assignment shall have free, unhindered passage across those assignments which lay directly, in the most expedient path, between the Inaccessible Assignment and the closest federal, state or tribal road.

17-16-3. RESPONSIBILITY FOR MAINTAINING PASSAGE. The holder of the Inaccessible Assignment shall be solely responsible for maintaining any passage through other assignments.

17-16-4. OBLIGATION TO CLOSE GATES. The holder of the Inaccessible Assignment shall also be responsible for opening and closing any gates on the assignments through which he or she crosses.

17-16-5. LIABILITY FOR DAMAGES. The holder of the Inaccessible Assignment shall be liable to the holders of the assignments through which he or she crosses for any damages done to or on these other assignments.

17-16-7. WRIT OF UNHINDERED PASSAGE. In the event that the holder of an assignment refuses free, unhindered passage to the holder of an Inaccessible Assignment. That holder of the Inaccessible Assignment may seek a "Writ of Unhindered Passage" from the Mescalero Apache Tribal Court.

- A. Upon receiving an application for a Writ of Unhindered Passage, the Mescalero Apache Tribal Court shall schedule a hearing and shall provide notice of said hearing to all assignment holders who will be affected by the Writ.
- B. Upon a showing from the holder of an Inaccessible Assignment that he or she cannot gain access to his or her assignment without crossing the assignment of another, and unless the holder of assignment demonstrated, by clear and convincing evidence, that granting such writ would cause undue harm or mischief, the Mescalero Apache Tribal Court shall issue a Writ or Unhindered Passage to the holder of the inaccessible assignment.
- C. The Writ of Unhindered Passage entitle its holder, the holder's guests and invitees, and the fellow residents of the holder's residence, to freely travel, without hinder or delay, across the assignments specified in the Writ.
- D. This Writ Unhindered Passage shall run with the land assignment and shall be transferable by the assignment holders only to future assignment holders of the same assignment
- E. Any intentional interference with passage pursuant of a Writ of Unhindered Passage shall be punishable as contempt of Court.
- F. This Writ of Unhindered Passage may be dissolved upon application to the Mescalero Apache Tribal Court if the circumstances originally mandating such Writ shall have materially changes or shall have ceased or exit.

SECTION 17. CONCERNING MORTGAGES, MORTGAGE FORECLOSURES, & EVICTIONS.

17-17-1. DEFINITIONS.

- A. "Borrower/Mortgagor" means the Tribe, its Tribally Designated Housing Entity, or any Member who has the legal right and capacity to execute a Mortgage and who has executed a Mortgage on his or her Leasehold Interest, including any heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Borrower.
- B. "Federal Agency" means any agency of the federal government that makes, guarantees, or insures mortgage loans, including but not limited to the Veteran's Administration ("VA"), the Department of Housing and Urban Development ("HUD"), the Federal Home Administration ("FHA"), and Department of Agriculture ("USDA").
- C. "Forbearance Relief" means an action that results in the lender or the government refraining from pursuing Mortgage Foreclosure.
- D. "Chairman" means the Chairman of the Tribe.
- E. "Lease" means the residential ground lease or other agreement for use of Trust Land, or Restricted Land on which a Mortgage has been or may be given.
- F. "Leasehold Interest" means the Borrower's right, title, and interest under a Lease from the Tribe, as Lessor, and may include improvements.
- G. "Leasehold Tax" means any tax that may be assessed by the Tribe against a Lessee for the use of land subject to a Leasehold Interest.
- H. "Lender/Mortgagee" means any mortgage lender or any successors or assigns of any such lender, and includes any subsequent holder, whether by assignment, succession, or otherwise, of the

original Lender's/Mortgagee's right, title, or interest in and to the Mortgage.

- I. “Lessee” means a person who has acquired a legal right of possession of tribal Trust or Restricted Lands by a Lease.
- J. “Lessor” means the Tribe.
- K. “Member” means an enrolled member of the Tribe.
- L. “Mortgage” means the leasehold mortgage given to secure a mortgage loan or other mortgage made by a Lender to a Borrower, which Mortgage must be approved by the Lessor and the Secretary.
- M. “Mortgage Foreclosure Proceeding” means a proceeding in the Tribal Court (i) to foreclose on the Leasehold Interest or other interests of the Borrower and/or (ii) to assign such interest of the Borrower to the Lender or other person or entity.
- N. “Nuisance” means maintenance on the mortgaged property of a condition that: unreasonably threatens the health or safety of the community or neighboring land users; or unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.
- O. “Order of Repossession” is an order of the Tribal Court restoring the Lessor or Lender to possession of Trust Land or Restricted Land and/or evicting a Borrower or other occupant from such property.
- P. “Residential Unit” means a building constructed or used for residential purposes.
- Q. “Restricted Land” means land within the jurisdiction of the Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the Tribe.
- R. “Secretary,” unless otherwise indicated, means the Secretary of the United States Department of the Interior or his duly designated representative.
- S. “Subordinate Lienholder” means the holder of any lien, including a mortgage perfected subsequent to the recording of a Mortgage under this Chapter; provided, however, such definition shall not include the Tribe with respect to a claim for a tribal tax on the Mortgaged property, where applicable.
- T. “Tribal Council” means the Mescalero Apache Tribal Council, being the governing authority of the Tribe.
- U. “Tribal Court” means the Tribal Court established by the laws of the 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.
- V. “Tribe” means the Mescalero Apache Tribe.
- W. “Trust Land” means land within the jurisdiction of the Tribe, title to which is held by the United States for the benefit of the Tribe.
- X. “Unlawful Detainer Action” means a suit brought before the Tribal Court to terminate a Borrower's interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such property.
- Y. “Waste” means spoilage or destruction of land, buildings, gardens, trees, or other improvements on the mortgaged property which result or will likely result in substantial injury to such property.

17-17-2. APPLICABILITY. This Chapter shall apply to any and all Mortgages, leasehold Mortgages, and agreements to secure an interest in all Residential Units, housing, dwellings, or accommodations for

human occupation or residence, or other buildings on Trust or Restricted Land and supersedes and replaces all other codes and ordinances previously adopted by the Tribe specifically relating to residential Mortgages. In addition, the section on eviction contained herein may be applied against any person or entity occupying Trust or Restricted lands without right.

17-17-3. PURPOSE & INTERPRETATION. The Tribal Court shall interpret and construe this Chapter to assist tribal members, and others with the consent of the Tribal Council, in obtaining Mortgage financing for the construction or purchase of residences, Residential Units, or other buildings on certain Trust Land or Restricted Land within the jurisdiction of the Tribe, by prescribing procedures for recordation, foreclosure, and evictions in connection with Mortgages given to secure loans made by Lenders.

17-17-4. JURISDICTION. The Tribal Court shall exercise jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Chapter, and with respect to any person or entity acting or causing actions which arise under this Chapter.

17-17-5. CONFLICTS WITH OTHER LAWS. If this Chapter is determined to conflict with any other law of general application adopted by the Tribe, this Chapter shall control.

17-17-6. APPEALS. Appeals under this Chapter shall be in accordance with the Tribe's general appellate provisions, if any.

17-17-7. NO MORTGAGEE OF LEASEHOLD INTEREST WITHOUT LEASE. Notwithstanding anything to the contrary contained herein or in any Mortgage document, no Borrower may mortgage a Leasehold Interest without first having a valid Lease for such property from the Tribe and obtaining the written consent of the Tribal Council to mortgage the Leasehold Interest. Any Mortgage given in violation of this Section shall be void and of no effect.

17-17-8. 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 same, including an assignment adjudged by the Tribal Court or by operation of law, except as such may arise upon satisfaction of the Leasehold Mortgage.

17-17-9. ALTERNATIVE REMEDIES. If the persons or property are subject to the jurisdiction of the courts of the United States, the remedies and procedures provided by this Chapter are in the alternative to the remedies and procedures provided by the laws of the United States.

17-17-10. RECORDING OF MORTGAGES AND LEASES. The appropriate offices for recording Mortgages and Leases are the Mescalero Apache Realty Office and the B.I.A. Regional Land Titles and Records Office. The Tribe agrees that a Lender may also require that the Leases and Mortgages be recorded in the state and/or county recorder's office in the state and/or county in which the mortgaged properties are located. For documents recorded at the Mescalero Apache Realty Office:

A. The recording clerk shall endorse upon any Lease and/or Mortgage or other security instrument received for recording the following:

1. The date and time of receipt of the Lease and/or Mortgage or other security instrument;
2. The filing number, to be assigned by the recording clerk, which shall be a unique number for each Lease and/or Mortgage or other security instrument received; and
3. The name of the recording clerk receiving the Lease and/ or Mortgage or other security instrument.
4. Upon completion of the above endorsements, the recording clerk shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

MESCALERO APACHE TRIBE

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

Title

- B. The recording clerk shall maintain such copies in the records of the recording system and shall return the original Lease and/or Mortgage or other security instrument to the person or entity that presented the same for recording.
- C. The recording clerk shall also maintain a log of each Lease and/or Mortgage or other security instrument recorded in which log there shall be entered the following:
 - 1. The name(s) of the Mortgagor(s) of each Mortgage or Lessor of each Lease, identified as such;
 - 2. The name(s) of the Mortgagee(s) of each Mortgage or Lessee or each Lease, identified as such;
 - 3. The name(s) of the parties and their designation in any other security instrument;
 - 4. The date and time of receipt;
 - 5. The filing number assigned by the recording clerk; and
 - 6. The name of the recording clerk receiving any Lease, Mortgage or other security instrument.
- D. Certified copies of Leases, Mortgages and other documents and the log maintained by the Recording Clerk shall be made available for public inspection and copying.

17-17-11. 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, except a lien or claim arising from a tribal Leasehold Tax assessed after the recording of the Mortgage.

17-17-12. FORECLOSURE.

- A. If a Borrower defaults in performance under a Mortgage, the Lender must provide a written Notice of Default prior to enforcing the terms and conditions of the Mortgage and prior to availing itself of the remedies under this Chapter.
 - 1. All Notices of Default on a Mortgage shall be properly served by Lender on Borrower, all Subordinate Lienholders, and the Tribe.
 - 2. Prior to initiating a Mortgage Foreclosure Proceeding on any HUD guaranteed Mortgage, notice shall be provided to the Secretary of HUD or his or her duly appointed representative.
 - 3. Prior to initiating a Mortgage Foreclosure Proceeding on any Mortgage guaranteed by any other Federal Agency, notice should be provided to the individual designated by the agency to receive such notice.
- B. A Borrower shall be considered to be in default when he or she is five (5) days past due on his or her Mortgage payment or is in violation of any other material term or condition of the Mortgage.

1. When a Borrower is five (5) days past due on his or her Mortgage payment or the Lender has received actual notice that the Borrower is in violation of any other material term or condition of the Mortgage, and before any foreclosure action or activity is initiated, the Lender shall provide written notice to the Borrower specifying the default and outlining curative actions that may be taken. The notice must include:
 - a. A statement that, if the Mortgage remains past due on three (3) installment payments or if the Borrower fails to cure any other material default within thirty (30) days from receipt of the notice, the Lender may ask the applicable Federal Agency to accept assignment of the Mortgage if required;
 - b. A statement of the qualifications for Forbearance Relief from the Lender, if any, and that Forbearance Relief may be available from the federal government; and
 - c. Names and addresses of government officials to whom further communication may be addressed, if any.
 2. In addition to the preceding notification requirements, the Lender shall:
 - a. Make a reasonable effort to arrange a face-to-face interview with the Borrower. This shall include at least one trip to meet with the Borrower at the mortgaged property; and
 - b. Document that it has made at least one phone call to the Borrower (or to a phone designated by the Borrower as able to receive and relay messages to the Borrower) for the purpose of arranging a face-to-face meeting.
 3. When a Borrower is past due on three (3) installment payments or another default has continued to exist for at least thirty (30) days from the receipt of written notice of such default by Borrower and at least ten (10) days before initiating a foreclosure action, the Lender shall, in writing by mail, certified return receipt requested, and by posting prominently on the Residential Unit or other building subject to a Mortgage, with a copy provided to the Tribe, advise the Borrower:
 - a. That information regarding the loan and default/delinquency will be given to credit bureaus;
 - b. Of the availability of homeownership counseling opportunities/programs offered by the Lender or otherwise; and
 - c. Of available assistance regarding the Mortgage/default.
- C. The Borrower or any Subordinate Lienholder may cure the default(s) at any time before entry of a judgment or foreclosure. Any Subordinate Lienholder who has cured a default may thereafter include in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note secured by the subordinate lien.
- D. In the event of default by the Borrower on any Mortgage or other loan agreement for which a Lease is pledged as security, the Lessor shall have the Right of First Refusal to acquire the Borrower's interest in the premises (subject to all valid liens and encumbrances) upon payment of all sums then in arrears and either payment of the balance of the loan or assumption of the Mortgage, provided that:
1. The Right of First Refusal may be exercised at any time within sixty (60) days after the Lessor receives notice in writing from the Lender of the Borrower's default. The Notice of the Lessor's Intent to Exercise its Right of First Refusal shall be provided in writing from the Lessor to the Borrower, all Subordinate Lienholders, and the Lender; provided,

however, that the Borrower shall have the remainder of the sixty (60) day period in which to cure the default.

2. The estate acquired by the Lessor through exercise of its Right of First Refusal shall not merge with any other estate or title held by the Lessor as long as the Lease is mortgaged or otherwise pledged as security for any loan.
3. If the Borrower defaults on a Mortgage, the Right of First Refusal may not be exercised by the Lessor unless the Borrower has been advised of Forbearance Relief that may be available, if any, and the Lender or the relevant federal agency has found the Borrower to be ineligible.

17-17-13. MORTGAGE FORECLOSURE PROCEEDINGS.

- A. Upon expiration of any applicable cure period for a default under a Mortgage, as identified in the Mortgage documents or otherwise provided in this Chapter, if there is a failure to cure, and if the Borrower is past due on three (3) or more installment payments or the Borrower has failed to cure any other material default within thirty (30) days of receipt of notice thereof, and the Lender has complied with the provisions set forth in this Chapter, the Lender may commence a Mortgage Foreclosure Proceeding in the Tribal Court as follows:
 1. By filing a verified complaint:
 - a. Citing authority for jurisdiction of the Tribal Court;
 - b. Naming as defendant(s) the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lienholder;
 - c. Describing the property subject to the Mortgage;
 - d. Stating the facts concerning (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action;
 - e. Appending as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such mortgaged property; including an allegation that all relevant requirements and conditions prescribed in federal and tribal law, and in the promissory note, security instrument, and the Lease, if any, have been complied with by the Lender;
 - f. Otherwise satisfying the requirements of the Tribal Court;
 2. By obtaining and serving upon each defendant a summons requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.
 - a. The summons must be issued in accordance with established Tribal Court rules and procedures.
 - b. The trial date specified in the summons shall be no less than thirty (30) nor more than forty-five (45) days from the date of service of the summons and complaint and must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date, and place specified in the summons; and
 3. By delivering, faxing, or sending such complaint and summons to the President and Tribal Council by means capable of verification.

- B. The customs, traditions, and laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding.
- C. Except by agreement of all parties and in the sole discretion of the Tribal Court, there shall be no continuances in cases involving the Lender or a Federal Agency.
- D. If a Notice of Default has been properly provided to all persons or entities required, if the Right of First Refusal has not been exercised, or if the default is not cured within the allowable period, as identified in the Mortgage documents or otherwise provided in this Chapter, and if the Tribal Court should find for the Lender, the Tribal Court shall enter judgment:
 - 1. Foreclosing the Borrower's interest in the mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
 - 2. Assigning the Leasehold Interest in the mortgaged property to the Lender or any purchaser of the Leasehold Interest at a foreclosure sale. The proceeds of such sale shall be applied first toward satisfaction of any lien resulting from the assessment of any Leasehold Tax, next toward any lien having a priority date prior to that of the Mortgage documents, next as provided in the Mortgage documents, finally toward any liens having a priority date subsequent to the Mortgage documents.
 - 3. Assignment of such mortgaged property shall be subject to:
 - a. The Borrower's right of redemption, if any;
 - b. Limitations as to who may become an assignee of a Leasehold Interest as determined by the Tribal Council or as stated in the Lease;
 - c. The right, under HUD Section 248 guarantees, of the Lender to convey the Leasehold Interest to the HUD Secretary without providing the Tribe the right of first refusal.
- E. The Tribal Court shall have the authority to enter against the Borrower a judgment for the following: back rent, unpaid utilities, and any charges due the Tribe or Lessor under any Lease or occupancy agreement; any and all amounts secured by the Mortgage that are due the Lender; and damages caused by the Borrower to the property other than ordinary wear and tear.
- F. The Tribal Court shall have the authority to award to the prevailing party costs and reasonable attorney's fees in bringing suit.
- G. If redemption is authorized, the redemption period shall be that period provided by applicable law or in the Mortgage documents. If the Lender is assigned the Borrower's Leasehold Interest, the Lender may subsequently sell or assign such Leasehold Interest without the approval of the Secretary, but only with the written approval of the Lessor. If HUD acquires the Leasehold Interest, it may transfer the same subject to the terms and conditions of the Lease and pursuant to applicable law.
- H. The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage Foreclosure Proceeding under this Chapter. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court, shall operate as a waiver of the sovereign immunity of the Tribe, except as expressly authorized by the Tribe.

17-17-14. EVICTION

- A. No person or entity may compel an occupant to vacate any premises by force or in a way that causes a breach of the peace. All persons or entities attempting to regain possession of any

property shall give a notice to quit and obtain a court order as provided in this Chapter.

B. If anyone claiming a right to possession desires to obtain possession of real property from another, he or she shall give notice to the occupant to quit possession of the property. The purpose of the notice to quit is to provide advance notice of a specific problem that needs to be addressed.

1. The notice to quit shall be addressed to the adult occupant(s) of the real property and shall state the reasons(s) for termination of possession and the date by which the occupant is required to quit possession of the property.
2. The notice to quit shall be in writing substantially in the following form:

NOTICE TO QUIT

I (or we) have a legal right to possession of the property now occupied by you at _____(here insert the address or other reasonable description of the location of the property), and hereby give you notice that you are to quit possession or occupancy on or before the _____(here insert the date) for the following reason(s)

_____(here insert the reason(s) for the notice to quit possession).

Printed Name & Signature

Address

Date & Place of Signing

3. The notice must be delivered within the following periods of time:
 - a. At least 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 an agreement with the occupant.
 - b. At least three (3) calendar days prior to the date to quit specified in the notice for Nuisance, serious injury to property, or injury to persons.
 - c. If there is an emergency 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.
 - d. At least fourteen (14) calendar days in all other situations.

17-17-15. UNLAWFUL DETAINER.

A. A person may be charged with unlawful detainer if such person has received notice to quit and continues in occupancy of the real property under any of the following situations:

1. After the expiration of the term of a Lease;
2. If such person has entered onto or remains on the real property of another without the

permission of the owner and without having any substantial claim under a lease or title to such property;

3. After the Lessor has terminated a person's tenancy pursuant to court procedures providing a hearing;
 4. After a Leasehold Interest has been foreclosed in a Mortgage Foreclosure Proceeding and the Borrower, Lessee, sub lessee, or other occupant of the property has received notice of such foreclosure and has remained in possession of the property for at least thirty (30) days contrary to the terms of the notice;
 5. When a person has received notice that he or she is in default under a Lease and requiring him or her to cure such default or surrender possession of the occupied property, and such person has not done either within the period provided in such notice;
 6. When a person continues to fail to keep or perform any condition or covenant of any lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property;
 7. When a person fails to comply with applicable tribal housing policies and/or regulation; or
 8. When such person continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property.
- B. Any person claiming a right to possess property held by another, including but not limited to a Lender or a Federal Agency, as appropriate, may commence an action in unlawful detainer in Tribal Court as follows:
1. By filing a verified petition for eviction:
 - a. Citing authority for jurisdiction of the Tribal Court;
 - b. Naming as defendant(s) the occupant(s) of the property and, if the property is subject to a Mortgage, the Borrower and each record owner claiming through the Borrower subsequent to the recording of the Mortgage, including each Subordinate Lienholder;
 - c. Describing the property subject to the petition;
 - d. Stating the facts concerning the alleged unlawful possession of the property by the defendant and, if the property is subject to a Leasehold Interest and/or a Mortgage (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Borrower(s); and (iv) any other facts necessary to support a cause of action;
 - e. Appending as exhibits true and correct copies, if any, of each occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and, if applicable, any assignment thereof relating to such mortgaged property;
 - f. Including an allegation that all relevant requirements and conditions prescribed in federal and tribal law, and in the occupancy agreement, promissory note, lease, loan agreement, security instrument, and/or Mortgage, and the assignment, if any, have been complied with by the petitioner;
 - g. Otherwise satisfying the requirements of the Tribal Court;

2. By obtaining and serving upon each defendant a summons requiring him or her to appear for a hearing upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court:
 - a. The summons must be issued in accordance with established Tribal Court rules and procedures;
 - b. The hearing date specified in the summons shall be at least six (6) but not more than thirty (30) days from the date of service of the summons and petition and must notify each defendant that judgment will be taken against him or her in accordance with the terms of the petition unless he or she appears for the hearing at the time, date, and place specified in the summons to provide evidence as to why he or she should not be evicted; and
 3. By delivering, faxing, or sending such complaint and summons to the President and Tribal Council by means capable of verification.
- C. The customs, traditions, and laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any eviction proceeding.
- D. The Tribal Court shall enter an order of repossession if:
1. Notice of suit is given in accordance with procedures provided herein; and
 2. The Tribal Court finds at the hearing that the defendant has committed an act of unlawful detainer; or
 3. The defendant(s) fails to appear pursuant to the summons.
 4. Upon issuance of an order of repossession, the Tribal Court shall have the authority to enter a judgement against the defendant(s) for the following, as may be deemed appropriate:
 - a. Back rent, unpaid utilities, and any charges due the Tribe, tribal housing authority, or sub lessor under any sublease or other written agreement, except for a Leasehold Mortgage;
 - b. If the property is subject to a Leasehold Mortgage, any and all amounts secured by a Leasehold Mortgage that are due the Lender or the appropriate Federal Agency;
 - c. Damages to the property caused by the defendant(s), other than ordinary wear and tear; and
 - d. Costs and reasonable attorney's fees.
- E. Except by agreement of all parties and in the sole discretion of the Tribal Court, no continuances are permitted in cases involving a Lender or a Federal Agency if such continuance will delay enforcement.
- F. Upon issuance of an order of repossession by the Tribal Court, tribal law enforcement officers shall enforce the order by evicting the defendant(s) from the property that is unlawfully occupied, within fifteen (15) days after the order.

17-17-16. LIMITED WAIVER OF IMMUNITY. The Tribe hereby authorizes a limited waiver of immunity from suit that the Tribe may enjoy with respect to any and all controversies or claims arising out of or related to the obligations of the Tribe under a Lease or any Mortgage documents or instruments to which the Tribe may be a party pursuant to a Mortgage assumption. In connection with such waiver, the Tribe hereby consents and attorns to the personal jurisdiction of any court of competent jurisdiction

with respect to any action to enforce any obligations owed by it to any other party, including a Federal Agency, or to enforce any other party's rights and/or remedies under such Lease(s) or Mortgage documents. The authority provided herein is not intended to nor shall it be construed to waive the immunity of the tribe for any other purpose or with respect to any claim or other matter not specifically mentioned herein, and is not intended to, nor shall it, extend to the benefit of any person other than the parties to such agreements or their successors or assigns.

SECTION 18. PERMIT REQUIRED TO BURN GARBAGE OR REFUSE

17-18-1. PERMIT REQUIRED. Prior to burning, the individual responsible for the fire shall obtain a burning permit from the Mescalero Fire Department. Said permit shall be in such form and in accordance with established written guidelines developed by the Mescalero Fire Department, subject to amendment or revocation by Tribal Resolution of the Mescalero Apache Tribal Council.

17-18-2. PENALTY FOR BURNING WITHOUT A PERMIT. Burning without a permit shall be a crime and subject to the imposition of both civil and criminal liability. Burning without a permit shall be a crime as defined by Chapter 10 of the Mescalero Apache Tribal Code and punishable in accordance with the provision of said Chapter.

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CHAPTER 18

FENCES

SECTION 1. NECESSITY.

18-1-1. NECESSITY OF FENCES. Every gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals, shall make a sufficient fence about his land in cultivation, or other lands that may be so injured, the same to correspond with the requirements of this Act prescribing and defining a legal fence.

18-1-2. PERMITS REQUIRED FOR CONSTRUCTION OF FENCE. No person, partnership, or organization shall construct any fence upon the Reservation without first obtaining a permit to construct such fence from the President of the Mescalero Apache Tribe.

SECTION 2. SPECIFICATIONS.

18-2-1. BARBED WIRE FENCE SPECIFICATIONS. When fences are constructed of barbed wire and posts, they shall be built substantially as follows: Posts set firmly in the ground and projecting above the ground not less than four feet (4'), said posts to be not less than two inches (2") in diameter at the smaller end, and to be set not over thirty-three feet (33') apart; four (4) barbed wires to be strung firmly and securely fastened to said posts, the bottom wire to be placed approximately twelve inches (12") from the ground, the second wire to the approximately twelve inches (12") above the bottom wire, the third wire to be approximately twelve inches (12") above the second wire, and the fourth wire to be approximately twelve inches (12") above the third wire, and between each two (2) posts there shall be placed approximately equidistant apart three (3) stays to be securely fastened to said wires for the purpose of holding the wires in position. Any four-wire fence greater or equivalent to said fence in strength and resisting power shall be considered a legal fence.

18-2-2. POLE AND POST FENCE SPECIFICATIONS. When the fence is constructed of poles and posts, the posts shall not be more than twelve feet (12') apart and the same size and set in the ground as described in Section 2 of this chapter. The poles to be at least two inches (2") in diameter at the smaller end and to be at least four (4) in number, firmly fastened to the posts with nails or wire, the top pole at least four feet (4') from the ground and the bottom pole not more than one foot (1') from the ground and the poles not to be more than one foot (1') apart.

SECTION 3. LEGAL PROTECTION OF FENCES AGAINST DAMAGE OR DESTRUCTION.

18-3-1. LEGAL PROTECTION. All fences shall be considered as under the care and protection of the law for damages done or destruction committed thereon.

18-3-2. FENCE BREAKING AND PENALTIES. Any person who shall be guilty of breaking or throwing down a fence, or in any manner whatever, breaking any rails, posts, stakes or whatsoever, other material is placed for the purpose of fencing, or a wall built with the objective, shall be summarily judged before the Tribal Court, and if convicted, shall be subject to a sentence for a period not to exceed one hundred eighty (180) days or a fine of not more than Three Hundred Sixty Dollars (\$360.00), or both.

18-3-3. DRIVING HERDS THROUGH FENCED LANDS, PENALTY FOR VIOLATIONS. Any person, persons, company or corporation, or their or either of their agents or employees, having charge of any herd of cattle, horses, or other animals for the purpose of driving them from place to place through or over the fenced land of another shall, at least twenty-four (24) hours before beginning such drive and passing through such land, obtain permission from the owner thereof, or his agent in charge, or if said land be leased, from the lessee or his agent thereof, to drive said herd across said enclosed lands. During passage over said lands, the party granted such permission shall carefully herd said animals to prevent mixture with other animals and the brands being driven, and shall before leaving such enclosure check the

herd thoroughly and cut therefrom all animals other than the brand being driven, and any person, persons, company or corporation, or their agent, driving any herd other than in the owner's recorded brand shall have the authorization in writing of the person owning the brand of record to drive the same, and any person violating the provisions of the Section shall be deemed guilty of an offense and upon conviction thereof shall be fined in any sum not more than Five Hundred Dollars (\$500.00) or confined in the Tribal Jail not more than six (6) months, or both.

18-3-4. FAILURE TO CLOSE GATES. Any person, or persons, who opens the gate of any fence, or fences, of any person or persons, the same being private property for the purpose of passing as aforesaid, and shall neglect to close the gate of any fence or fences after having opened the same, shall be subject and responsible for the damage to the land, crop or grass of the owner or owners of such land through such neglect; and such damage shall be punished by imprisonment at hard labor for a period of ten (10) days or a fine of Five Dollars (\$5.00), or both.

CHAPTER 19

TAXATION

SECTION 1. GROSS RECEIPTS TAX.

19-1-1. PURPOSE. The purpose of this chapter is to raise and provide revenue to operate and maintain the government of the Mescalero Apache Tribe, and otherwise to provide for the welfare of the Mescalero Apache people.

19-1-2. DEFINITIONS.

- A. "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, federal agency, state agency, municipality or county, other Indian tribe or pueblo, or any other entity.
- B. "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.
- C. "Reservation" means the land situated within the geographic boundaries of the Mescalero Apache Indian reservation, or any land owned by, leased by, or otherwise subject to the control of the Mescalero Apache Indian tribe, or any other facility of the Mescalero Apache Indian tribe.
- D. "Gross Receipts" means the total amount of money or the value of other consideration received from selling property on the Reservation, from leasing property employed on the Reservation or from the Mescalero Apache Tribe, or from performing services of any type on the Reservation, including any type of time-price differential and receipts from sales of tangible personal property handled on consignment. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged. When the sale of property or service is made under any type of charge, additional or time sales contract, or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, he shall pay the gross receipts tax upon the full sale or leasing contract amount. "Gross receipts" for the purposes of the business of buying, selling or promoting the purchase, sale or leasing, as factor, agent or broker, on a commission or fee basis, of any property, service, stock, bond or security, includes the total commissions or fees derived from the business. For the purposes of this Chapter, "gross receipts" does not include any receipts received from a Class I, II or III gaming activity conducted on the Mescalero Reservation, or any receipts received from a transaction occurring between one Resort Enterprise and another Resort Enterprise.
- E. "Property" means real property, tangible or intangible personal property, including licenses, franchises, patents, trademarks and copyrights.
- F. "Leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property.
- G. "Service" means all activities engaged in for other persons for a consideration, which activities involve primarily the performance of a service, and includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project, and further includes all manufacturing or other activities involving the combining or processing of components or materials to increase their value for sale in the ordinary course of business.
- H. "Rate" for the purposes of engaging in business on the Reservation, an excise tax equal to 5.5%

of gross receipts on any person engaging in business on the Reservation, except that the rate on receipts from room rentals on lodging offered by a Resort Enterprise owned and operated by the Mescalero Apache Tribe shall be 10.75%, the rate on receipts from retail food and beverage offered by a Resort Enterprise owned and operated by the Mescalero Apache Tribe shall be 6.75%, and the rate on all other receipts from the sale of goods and services by a Resort Enterprise owned and operated by the Mescalero Apache Tribe shall be 6.5%.

- I. “Resort Enterprise” is defined as all tribal enterprises now or hereafter created and established by the Mescalero Apache Tribe whose business activities are related to or associated with tribal resort and casino enterprises. As of the effective date of the adoption of this Ordinance, existing Resort Enterprises are comprised of the Inn of the Mountain Gods Resort and Casino, the Inn of the Mountain Gods, Casino Apache, Ski Apache and Casino Apache Travel Center.

19-1-3. PRESUMPTION. To prevent evasion of this tax and to aid in its administration, it is presumed that all receipts of a person derived as a result of all business activities carried out on the Reservation, either directly or indirectly, are subject to the tax levied by this Section.

19-1-4. TRIBAL COUNCIL TO RESOLVE DISPUTES. In the event there is a dispute over the applicability or effect of the tax imposed by this chapter, the Tribal Council shall determine whether and to what extent such tax applies to the transaction or person involved in the dispute. The resolution of such dispute by the Tribal Council shall be final.

19-1-5. WAIVER. With respect to a particular transaction or person, the Tribal Council may waive any part or all of the application of this chapter if it is determined that the burden of the tax shall fall on the government of the Mescalero Apache Tribe or if such waiver is otherwise in the best interests of the Mescalero Apache Tribe.

19-1-6. DATE DUE. The taxes imposed by this chapter are to be paid on or before the 25th day of the month following the month in which the taxable event occurs.

19-1-7. EXEMPTIONS. Exempted from the tax imposed by this chapter are the following:

- A. All subordinate organizations of the Tribe for economic and other purposes, except for a Resort Enterprise owned and operated by the Mescalero Apache Tribe, which is not exempt;
- B. The receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services;
- C. The receipts of the United States or any agency or instrumentality thereof;
- D. The receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service in any jurisdiction.
- E. Notwithstanding the provisions of 19-1-7. A., Ski Apache is exempt from the tax imposed by this Chapter so long as it is required to collect and remit State of New Mexico Gross Receipts Tax to the State of New Mexico.

19-1-8. COUNCIL INTENT. It is the intention of the Tribal Council to levy the maximum tax possible without unduly interfering with a person's engaging in business on the Reservation.

19-1-9. COURT REVIEW. Any person aggrieved by a decision of the Tribal Council under the provisions of this chapter may exercise any remedy available at law for a review of the findings and determination of the Tribal Council, and nothing in this Code shall be deemed to preclude application of Public Law 90-284, 25 U.S.C. § 1301 and § 1302.

SECTION 2. NON-TAXATION OF HOME CONSTRUCTION.

19-2-1. PURPOSE. Any form of taxation, direct or indirect, on home construction will jeopardize the efforts of the Tribe to promote the welfare of its members and thereby interfere with the efforts of the Tribal Government to better meet the needs of its people. Currently, many members of the Mescalero Apache Tribe are living in dwellings that are sub-standard. To cure this problem and assist tribal members in securing adequate housing, the Tribe has established policies of encouraging home construction. Because of the joint concern of the federal government and the Tribe, the federal government has established the Tribe as the instrumentality for control and development of better housing. New Housing will assist tribal members in securing better housing and ease the critical condition of poor housing on the Reservation, and thereby promote the social and economic advancement of the Mescalero Apache people; taxation of such construction, direct or indirect, would interfere with a governmental function of the Mescalero Apache Tribe and adversely affect the efforts of the federal government's instrumentality in meeting the needs of the Mescalero Apache people. There will be no taxation on home construction, either directly or indirectly.

SECTION 3. TAXATION OF GASOLINE

19-3-1. PURPOSE, DEDICATION. The purpose of the gasoline tax is to raise and provide revenue exclusively and solely for special capital improvement projects and may be dedicated to retire bonds or debt incurred by the government of the Mescalero Apache tribe for the construction of such projects.

19-3-2. DEFINITIONS. As used in this section:

- A. all previous and subsequent definitions of Chapter 19 apply to this section;
- B. “fuel supply tank” means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains gasoline or gasoline is delivered into it;
- C. “gallon” means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees (60°) Fahrenheit at the election of the Tribe;
- D. “gasoline” means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats, or aircraft, except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;
- E. “government-licensed vehicle” means any motor vehicle registered and belonging to the Mescalero Indian Tribe or any other Indian nation, tribe, or pueblo or any of its agencies or instrumentalities; the United States or any of its agencies or instrumentalities; or the State of New Mexico or any other state and its political subdivisions, agencies, or instrumentalities;
- F. “motor vehicle” means any self-propelled vehicle or device that is either subject to registration by an appropriate government authority or used or that may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semi-trailer;
- G. “receive” means the delivery of gasoline into the fuel supply tank of a motor vehicle or when it is placed into any tank or other container from which sales or deliveries at wholesale not involving motor vehicles are made, or gasoline that is stored, produced, refined, manufactured, blended, or compounded at a facility located on the Mescalero Apache Reservation then loaded into tank cars, tank trucks, or tank wagons from which sales or deliveries not involving motor vehicles are made;
- H. “retailer” means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. Retailer shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

- I. “special fuel” means diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle;
- J. “tax administrator” means the person designated by the President to execute the provisions of this chapter and section.
- K. “wholesaler” means a person who generally sells gasoline in quantities greater than thirty-five gallons or more per transaction and does not deliver the gasoline into the fuel supply tanks of motor vehicles. “Wholesaler” shall be construed so that a person simultaneously may be a wholesaler and a retailer.

19-3-3. IMPOSITION AND RATE OF TAX.

- A. For the privilege of receiving gasoline from within the exterior boundaries of the Mescalero Apache Reservation from tribally owned distributors as either retailers or wholesalers, there is imposed an excise tax per gallon of gasoline thus received that is at all times identical to the tax on gasoline imposed by the State of New Mexico pursuant to Section 7-13-3 N.M.S.A.. 1978.
- B. The tax imposed by this section may be called the “gasoline tax.”

19-3-4. TAX RETURNS; PAYMENT OF TAX. Distributors shall file gasoline tax returns in form and content as prescribed by the tax administrator on or before the twenty-fifth (25th) day of the month following the month in which gasoline is received in the Mescalero Apache Reservation. Such returns shall be accompanied by payment of the amount of gasoline tax due.

19-3-5. CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT, OR ACTS OF GOD BEFORE RETAIL SALE. Upon the submission of proof satisfactory to the tax administrator, the tax administrator shall allow a claim for refund or credit for tax paid on gasoline destroyed by fire, accident, or acts of God while in the possession of a tribal distributor, wholesaler, or retailer.

19-3-6. DEDUCTIONS. Provided that satisfactory proof is furnished to the tax administrator, the computation of the gasoline tax due may include the deduction of the total amount of gasoline received in the Mescalero Apache Reservation during the tax period for gasoline that was:

- A. Delivered into the supply tank of any government-licensed vehicle, or
- B. Sold to the Mescalero Apache Tribe or its subordinate organizations except for the Inn of the Mountain Gods, the Tribal Store or other tribal retailer, or any wholesale fuel operation of the Mescalero Apache Tribe, or
- C. Sold to the United States or any agency or instrumentality thereof, or
- D. Sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof, or
- E. Sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof.

19-3-7. EFFECTIVE DATE. The provisions of this section shall take effect on the first day of the month first occurring after enactment by the Mescalero Apache Tribal Council and execution by its President.

SECTION 4. SPECIAL ASSESSMENT – SCHOOL TAX.

19-4-1. PURPOSE. The purpose of this chapter is to raise and provide a source of funds pay the cost of or to repay loans related to, constructing, equipping, furnishing, supplying and maintaining a Qualifying Educational Facility on the Mescalero Apache Reservation, and to otherwise provide for the general welfare of the Mescalero Apache people.

19-4-2. DEFINITIONS.

- A. “Assessed Amount” means the difference between the Monthly Assessment Amount and all taxes

imposed on or collected by the Resort Enterprises to the Mescalero Apache Tribe for any month is greater than the Monthly Assessment Amount, then the Assessed Amount for that month shall be zero.

- B. "Monthly Assessment Amount" means \$200,000.00.
- C. "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, federal agency, state agency, municipality or county other Indian tribe or pueblo, or any other entity.
- D. "Qualifying Educational Facility" means the Mescalero Apache K-12 School.
- E. "Reservation" means the land situated within the geographic boundaries of the Mescalero Apache Indian reservation, or any land owned, leased or otherwise subject to the control of the Mescalero Apache Tribe or any other facility of the Mescalero Apache Tribe.
- F. "Resort Enterprise" means all tribal enterprises now or hereafter created and established by the Mescalero Apache Tribe whose business activities are related to or associated with the tribal resort and casino enterprises. As of the effective date of the adoption of this Ordinance, existing Resort Enterprises are comprised of the Inn of the Mountain Gods Resort and Casino. The Inn of the Mountain Gods, Casino Apache, Ski Apache and Casino Apache Travel Center.
- G. "Special Assessment" shall mean a tax in an aggregate amount not to exceed two million four hundred thousand dollars (\$2,400,000) per calendar year imposed by this Section 4.
- H. "Tax Year" means the calendar year.

19-4-3. IMPOSITION OF TAX. There is imposed on the Resort Enterprises, jointly and severally, a Special Assessment in the amount of the Assessed Amount: provided, however, the Inn of the Mountain Gods Resort and Casino shall not have any liability for the payment of the Special Assessment except for those months in which it has received rental or service payments from another Resort Enterprise. Inn of the Mountain Gods Resort and Casino shall allocate the Assessed Amount monthly among the Resort Enterprises in its sole and absolute discretion.

19-4-4 TRIBAL COUNCIL TO RESOLVE DISPUTES. In the event there is a dispute over the applicability or effect of the Special Assessment imposed by this Section 4, the Mescalero Apache Tribal Council shall determine whether and to what extent such tax applies to the transaction or Resort Enterprise involved in the dispute. The resolution of such dispute by the Mescalero Apache Tribal Council shall be final.

19-4-5 RESTRICTED USE OF SPECIAL ASSESSMENT. Monies raised by this special assessment shall be used only for the support of educational programs, capital improvements, operating expenses and other programs that directly or indirectly benefit the Qualifying Educational Facility or directly or indirectly benefit the Tribe's scholarship programs.

19-4-6. DATE DUE. The Assessed Amount imposed by this Section 4 is to be paid on or before the 25th day of the month following the month ended.

19-4-7. EXPIRATION. Section 4 of this Chapter 19 expires June 30, 2018.

SECTION 5. CIGARETTE TAX

19-5-1. PURPOSE. The purpose of the cigarette tax is to raise and provide revenue for the operation of governmental services to the Mescalero Apache Tribe.

19-5-2. DEFINITIONS. Those definitions listed in Section 19-1-2 shall apply to this Section. In addition, the following definitions shall also apply.

- A. "Cigarette" means:

1. Any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;
 2. Any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in Paragraph (1) of this subsection;
 3. Bidis and kreteks; or
 4. Any other roll of tobacco that is defined as a "cigarette" in Subsection D of Section 6-4-12 N.M.S.A. 1978.
- B. "New Mexico tax credit stamp" means that stamp required by the State of New Mexico to be affixed on all cigarette products sold for sale to consumers.
- C. "Tribal Retailer" means any entity or person licensed to sell cigarettes to consumers within the exterior boundaries of the Reservation.

19-5-3. IMPOSITION AND RATE OF TAX.

- A. For the privilege of purchasing cigarettes within the exterior boundaries of the Mescalero Apache Indian Reservation from Tribally owned retailers, there is imposed an excise tax:
1. Three and seventy-five hundredths cents (\$.0375) per cigarette if the cigarettes are packaged in lots of twenty or twenty-five;
 2. Seven and one-half cents (\$.075) per cigarette if the cigarettes are packaged in lots often; or
 3. Fifteen cents (\$.15) per cigarette if the cigarettes are packaged in lots of five;
- B. The tax imposed by this section may be called the "cigarette tax."

19-5-4. LICENSING.

- A. All entities wishing to sell cigarettes within the boundaries of the Reservation must first obtain a Tribal cigarette license.
- B. License shall be granted upon written request and at the discretion of the Tribal President. However, denial of a request for a license may be appealed in writing to the Tribal Council.

19-5-5. REQUIRED INVENTORIES AND MAINTENANCE OF RECORDS.

- A. Distributors shall be required to submit inventories of cigarettes sold to Tribal retailers directly to the Tribe.
- B. In addition, each Tribal retailer shall submit an inventory of Non-Tribal member sales when submitting tax collections to the Tribe.
- C. All Tribal retailers must maintain receipts and all other records relating to the sale of cigarettes for a period of three (3) years.

19-5-6. INSPECTION. Upon the request of the Tribe, each Tribal retailer shall:

- A. Submit to inspections of premises where cigarettes are sold; and
- B. Produce copies of all receipts and other documents related to the sale of cigarettes upon the request of the Tribe.

19-5-7. RESALE. Cigarettes sold by a Tribal retailer shall be sold for use, not for resale.

19-5-8. WAIVERS AND EXEMPTIONS. There shall be no waivers or exemptions from the imposition of the cigarette tax.

19-5-9. VIOLATIONS OF THIS SECTION. Any entity or individual found guilty of violating any part of this Section shall be fined in an amount up to but not exceeding ONE THOUSAND DOLLARS (\$1,000.00) and/or revocation of its Tribal cigarette license.

CHAPTER 20

BUSINESS REGULATIONS

SECTION 1. OCCUPATION LICENSE.

20-1-1. DEFINITIONS. The term "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, federal agency, state agency, municipality or county, Indian tribe or pueblo, or any other entity.

20-1-2. REQUIRED PERMIT.

- A. Purpose. In order to further the economic well-being of the Tribe, and to promote the social and economic development of the Mescalero Apache people, the Tribal Council shall promulgate plans of operation, policy plans, and other guidelines by which on-Reservation business activity may be regulated.
- B. The office of the Tribal President shall execute these Council plans, and generally implement the Tribe's regulation of business activity on the Mescalero Apache Reservation. All persons desiring to conduct any business on the Reservation shall apply to the President's office for approval prior to commencing said business. The President or a designated appointee shall take and pass on these Applications, and implement and enforce Council guidelines. Said Application may be on an application form supplied by the President, or may be by separate application, provided all required information is contained therein.
- C. This Chapter does not apply to an individual's business carried on in the home and not harmful to the community, its environment, or mores. Nor does it apply to occasional fund raising efforts by clubs or organizations of the community.

20-1-3. THE APPLICATION. The Application shall contain the following information:

- A. Firm name;
- B. Name under which the firm or person is conducting business, if different;
- C. Principal business location and telephone number;
- D. The type of ownership: e.g., proprietorship, partnership, joint venture, corporation, cooperative association, syndicate, government agency, Indian tribe or pueblo, or other (please designate);
- E. How long the person has been in business;
- F. If a corporation, the states in which it has incorporated;
- G. The states in which it is authorized to do business;
- H. A list of owners or principal shareholders and officers;
- I. Name and address of agent on the Reservation;
- J. Federal identification number, if any;
- K. Location where business records are maintained, if different from principal business location;

- L. Description of the nature of its principal business operations;
- M. A description of the business to be undertaken on the Reservation;
- N. A description of the land on the Reservation where business is to be conducted;
- P. The location of the principal office on the Reservation;
- Q. A Balance Sheet for its next preceding fiscal year;
- R. A description of how it plans to finance the business to be conducted on the Reservation;
- S. Whether it is insured or whether its performance is secured by a performance bond, and by whom;
- T. A list of all claims and charges filed against it by any individual or any agency or government, alleging violations of any applicable governmental rule or regulation, and stating specifically whether claims have been filed against it either by or pursuant to the Rules of the Equal Employment Opportunity Commission or the United States Civil Rights Commission.

20-1-4. FILING OF APPLICATION. There shall be one (1) original and three (3) duplicate original copies of the Application filed. Applications shall be submitted to the President's office prior to any business operation.

20-1-5. DISPOSITION OF APPLICATION. The President or his appointee shall review the Applications so submitted. Supplementary information to the Application may be sought. The decision to accept, reject, or accept with conditions any Application is reviewable by the Council in its discretion upon petition by any party impacted by the executive action. In the event the President accepts the Application, and review by the Council is sought, no commercial activity may be undertaken until review by the Council or any other form of appellate review has been completed. If deemed appropriate, the Council may set an appeal bond.

20-1-6. RE-APPLICATION. Persons whose Applications are refused shall have the option to reapply with the consent of the President or his appointee, or the expiration of six (6) months from the date of refusal, whichever shall first occur.

20-1-7. REVIEW. All facilities maintained by and all business operations of such persons whose Applications shall have been approved shall be subject to periodic inspection and review by the President, or his appointee. Any failure to comply with the conditions under which the Applications were originally approved shall be grounds for termination of the privilege of doing business on the Reservation.

20-1-8. LICENSE. Upon approval of the Application, the President shall issue a License or Certificate authorizing such person to do business on the Reservation for such purposes and for such period of time as he may designate. Any person failing to obtain such License or Certificate shall be prohibited from conducting any business.

20-1-9. FEE. For all such applications submitted to the President, there shall be an application fee of Five Dollars (\$5.00).

20-1-10. INSPECTION. The President, in discharging his duties of inspection and review, may enlist the assistance of any agency of the United States Government to conduct such inspections and reviews. All such inspections shall be conducted on the site of the business operation, and shall be for the purpose of determining that said business operations are in compliance with all architectural specifications, all federal laws, federal rules, federal regulations and other federal orders, all tribal laws and tribal ordinances, and also in compliance with any specific conditions under which said operations were originally approved. Said inspections and reviews may further determine whether said person is in compliance with the existing contract or contracts between such person and the Mescalero Apache Tribe.

20-1-11. COURT REVIEW. Any person denied authority to conduct business on the Reservation may exercise any remedy available at law for a review of the findings and decision of the Tribal Council, and further, nothing in this Code shall be deemed to preclude application of Public Law 90-284, 25 U.S.C. §1301 and §1302.

20-1-12. RESERVED POWER. This Section shall in no way interfere with the power of the Tribal Council to conduct its own inspections and reviews of the said business operations, and the Tribal Council may itself conduct such inspections and reviews at such times and upon such conditions as it deems to be in the best interest of the Mescalero Apache Tribe.

SECTION 2. FOOD ESTABLISHMENTS.

20-2-1. PURPOSE. The purpose of this Section is to protect the public where and when food and drink are offered for sale in open-air public places, providing regulations and inspections for such places.

20-2-2. SERVING IMPLEMENTS. Utilize single service cups, dishes and implements for serving of food and drink. This service shall be constantly and fully protected from contamination such as dust and insects, and shall be used only once. Service shall be stored in and dispensed from covered containers.

20-2-3. FOODS PROHIBITED. Foods which commonly cause food poisoning such as custards, cream filled pastries, potato salad, ham, fowl and roasts shall not be served.

20-2-4. REFRIGERATION. Perishable foods such as hamburger, wieners, milk, etc., shall be kept under refrigeration at all times.

20-2-5. FOOD COVERED. All foods and drinks including cotton candy, candied apples, etc., are to be kept covered so as to prevent contamination from flies, dust, etc. If cloth coverings are used, they shall be used for no other purposes and shall be replaced by clean cloths daily or more often if necessary.

20-2-6. PREPARATION UTENSILS. All utensils and equipment shall be of easily cleanable construction. That is, they must be smooth and in good repair. No chipped enamelware, chipped or cracked dishes, or open seamed cans, buckets or tubs will be permitted.

20-2-7. COOLERS. Dry beverage coolers are preferable, but if bottled drinks are stored in a water-bath cooler, the top two inches of the bottle should be kept above the water level. Chlorine must be added to the water if a water-bath cooler is used. Directions for adding the chlorine will be given by the Sanitarian when he makes his inspection. **NO MILK OR MILK PRODUCTS MAY BE KEPT IN SUCH A COOLER.**

20-2-8. ICE. Ice which comes in contact with food and drink shall be properly handled and stored in a sanitary, covered container. Ice for cooling cannot be used for consumption.

20-2-9. WASHING OF HANDS. Each concession shall make provisions for suitable hand washing facilities which shall be used for NO other purpose. Handwashing facilities shall include handwashing basins, papers towels, soap, and a container for waste water. Any person engaged in the food concession who leaves the food preparation area for any reason, shall wash his hands before resuming his duties in the food preparation and service area.

20-2-10. CLOTHING. All persons working in concessions shall wear clean clothing, caps and hair nets.

20-2-11. LIQUID WASTE. Liquid wastes are not to be dumped into streets or areas around the concession. Covered containers must be provided for liquids and all liquids are to be hauled away by the operator of the concession.

20-2-12. CLEAN AREA. The operator of each concession shall be responsible for the cleanliness of the area around his concession.

20-2-13. GARBAGE CONTROL. Enough garbage containers with lids are to be provided by the operator of the concession for garbage and rubbish. These cans must be covered at all times. A minimum of two

(2) thirty (30) gallon containers will be required for each concession. The operator of each concession is to be responsible for emptying the garbage containers twice a day in a suitable and designated area.

20-2-14. COMMUNICABLE DISEASE. No person who has any disease in a communicable form or is a carrier of such disease shall work in any concession, and no concession shall employ any person or persons suspected of having any disease in a communicable form or of being a carrier of such disease. If the concession manager suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the local U. S. Public Health Service Indian Hospital.

20-2-15. EXECUTING AGENCY. The Tribal Health Service shall regulate the activities under this Section and inspect and enforce the Code as it relates to food establishments.

SECTION 3. CONSTRUCTION BUSINESS.

20-3-1. PURPOSE. The Tribal Council has found that there is a need for special regulation of all construction and building projects conducted on the Reservation in order to protect the Tribe and its members against fraudulent and shoddy construction contractors. Under the direction of the President, the Tribal Building Code Supervisor shall administer and enforce this Section.

20-3-2. PERMISSION. All persons conducting business operations involving the construction or building of any structure of any nature whatsoever shall be required to obtain the specific permission of the Building Code Supervisor for such construction. In addition to the application to be submitted pursuant to Section 1 Chapter 20, all persons who contemplate the performance of construction or building operations on the Reservation shall submit in writing to the Building Code Supervisor a statement containing the following information:

- A. The location on the Reservation of all proposed structures;
- B. Architectural plans or other specifications for all such structures;
- C. A description of the architectural style of the proposed structures;
- D. A description of the architectural style of the surrounding buildings and structures;
- E. The anticipated period of time before completion, and;
- F. The anticipated cost of the project.

20-3-3. APPROVAL BY TRIBAL COUNCIL. The Tribal Council shall have the authority by resolution to review any determination by the Building Code Supervisor upon any Application to Construct made before the Building Code Supervisor prior to commencement of construction, and make its own rulings thereon. Any applicant or other person whose interests would be directly affected may seek review of any Application accepted or rejected. Any modification of the Code Supervisor's determinations will be issued only after a hearing thereon has been afforded to any parties whose interests would be directly affected.

SECTION 4. LABOR ORGANIZATIONS.

20-4-1. RIGHT TO EMPLOYMENT. No person shall be required, as a condition of employment or continuation of employment on Tribal lands, to:

- A. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- B. Become or remain a member of a labor organization;
- C. Pay dues, fees, assessments or other charges of any kind or amount to a labor organization;
- D. Pay to any charity or other third party, in lieu of such payments any amount equivalent to a pro-

rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization; or

E. Be recommended, approved, referred or cleared through a labor organization.

20-4-2. WRITTEN AUTHORIZATION FOR PAYROLL DEDUCTIONS REQUIRED. No employer shall deduct from the wages, earnings, or compensation of any employee any union dues, fees, assessments or other charges to be held for, transferred to or paid over to a labor organization, unless the employee is first presented and the employer has received a signed written authorization for the deductions. The employee may at any time revoke the authorization for deductions by given written notice of revocation to the employer.

SECTION 5. BUSINESS CORPORATIONS.

20-5-1. DEFINITIONS. As used herein unless the text otherwise requires:

- A. "Corporation" or "Domestic Corporation" means a tribal corporation for profit subject to the provisions of Tribal Law except a foreign corporation;
- B. "Foreign Corporation" means a corporation for profit organized under laws other than the laws of this Tribe;
- C. "Articles of Incorporation" means the original or restated Articles of Incorporation or articles of consolidation and all amendments thereto including articles of merger;
- D. "Shares" means the units into which the proprietary interests in a corporation are divided;
- E. "Subscriber" means one who subscribes for shares in a corporation whether before or after incorporation;
- F. "Shareholder" means one who is a holder of record of shares in a corporation;
- G. "Authorized Shares" means the shares of all classes which the corporation is authorized to issue;
- H. "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 canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued shares," but not "outstanding shares";
- I. "Net Assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation, except that treasury shares shall not be considered assets of a corporation for any purpose under this Ordinance;
- J. "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 Paragraphs (1) and (2) of this subsection 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. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation;
- K. "Surplus" means the excess of the net assets of a corporation over its stated capital;

- L. "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 does not include unrealized appreciation of assets or re-evaluation surplus. Earned surplus also includes any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares of the property and assets of consolidations or acquisitions of all or substantially all of the outstanding shares of the property and assets of another corporation, domestic or foreign;
- M. "Capital Surplus" means the entire surplus of a corporation other than its earned surplus;
- N. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business;
- O. "Annual Report" means the annual report required by this Ordinance;
- P. "Franchise Tax" means the franchise tax imposed by this ordinance or any amendments hereto;
- Q. "Fees" means the fees imposed by this ordinance or any other tribal law;
- R. "Address" means a recitation of the mailing address or post-office box number and the street address, if within a municipality or a description of the geographical location, if outside a municipality;
- S. "Duplicate Original" means a document which is signed or executed in duplicate.
- T. "Tribe" means the Mescalero Apache Tribe unless otherwise indicated; and
- U. "Tribal Court" means the Mescalero Apache Tribe Tribal Court.

20-5-2. INCORPORATORS. The Tribe as a constitutional entity, organized under 25 U.S.C. §476, alone or with one or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation.

20-5-3. ARTICLES OF INCORPORATION.

- A. The Articles of Incorporation shall set forth:
 - 1. The name of the corporation;
 - 2. The period of duration, if other than perpetual;
 - 3. The purpose or purposes for which the corporation is organized;
 - 4. The aggregate number of shares which the corporation shall have authority to issue; if the shares consist of one class only, the par value of each of the shares, or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class, and a statement of the par value of the shares of each class or that the shares are to be without par value;
 - 5. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
 - 6. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as they are to be fixed in the Articles of Incorporation, and a statement of any authority to be vested in the board of directors to

establish series and fix and determine the variations in the relative rights and preferences as between series;

7. Any provision limiting or denying to shareholders the preemptive right to acquire unissued or treasury shares, or securities convertible into such shares or carrying a right to subscribe to or acquire shares;
 8. The address of its initial registered office, and the name of its initial registered office, and the name of its initial registered agent at the address;
 9. 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 meeting of shareholders or until their successors are elected and qualify; and
 10. 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 Ordinance.
- C. The Articles of Incorporation may set forth any provision which the Tribal Council elects to set forth for the regulation of the internal affairs of the corporation.
- D. The Articles of Incorporation shall be in substantially the following form:

ARTICLE I. The name of the corporation is _____.

ARTICLE II. The duration of the corporation shall be perpetual.

ARTICLE III. The purpose for which the corporation is organized are _____; to and for the purpose of carrying on all of the aforesaid business, to build, lease, buy, sell and convey property, both real and personal, as the same shall be necessary to the conducting of said business.

To purchase, or otherwise acquire, goods, merchandise and personal property of every class, and to hold, own, pledge, sell or otherwise dispose of, trade, deal in and with the same.

To borrow or raise money and to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments, and evidences of indebtedness and to secure the payment of any of the foregoing and the interest thereof by mortgage upon or pledge, or assignment in trust of the whole or any part of the property of the corporation, and to sell, pledge, or otherwise dispose of such bonds and other evidences of indebtedness for the purposes of the corporation.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To conduct business in any of the states, territories, possessions or dependencies of the United States or on any Indian reservation.

In general, to carry on any other business in connection with the foregoing and to have and exercise all the powers conferred by the ordinances and laws of the Mescalero Apache Tribe upon corporations and to do any or all of the things herein before set forth to the same extent as natural persons might or could do, and in any part of the world.

The foregoing clauses shall be construed both as object and powers, except where otherwise expressed, such objects and powers shall be in no wise limited or restricted by reference to or inference from the term of any other clause in this Certificate of Incorporation, but the objects and powers so specified shall be regarded as independent objects and powers and it is hereby expressly provided that the foregoing

corporation as its registered agent, if the agent is an individual, or an affidavit executed by the president or vice president of a corporation which is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the Articles of Incorporation and the affidavit conform to law, he shall, when all fees and franchise taxes have been paid:

1. Endorse the originals "Approved" and the month, day and year thereof;
2. File one original and an affidavit in his office; and
3. Issue a Certificate of Incorporation.

B. The certificate of incorporation shall be returned to the incorporators or their representative.

20-5-5. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon the approval of the certificate of incorporation by the President, the corporate existence shall begin.

20-5-6. ORGANIZATION MEETING OF DIRECTORS. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the Articles of Incorporation shall be held, either within or without this reservation, at the call of the President of the Mescalero Apache Tribe for the purpose of adopting bylaws, electing officers and the transaction of other business as may come before the meeting.

20-5-7. AUTHORITY AS TO REAL ESTATE. The corporation is not authorized to hold title to any real estate located within the physical boundaries of the Mescalero Indian reservation. Any interest in real estate held by the corporation will be under, and by virtue of, a lease authorized by separate resolution of the Mescalero Apache Tribal Council, and administered by the President. The leasehold is authorized by the terms of said lease.

20-5-8. GENERAL POWERS AND LIMITATIONS ON POWERS. Each corporation has power to:

- A. have perpetual succession by its corporate name unless a limited period of duration is stated in its Articles of Incorporation;
- B. enter into contracts with independent third parties, including United States Government, and to waive its right to immunity from suit (sovereign immunity) as to its contracts. The authority to waive immunity from suit is limited to the corporation, and the assets held in the name of the corporation. No act of the corporation shall be deemed to waive the sovereign immunity of the Mescalero Apache Tribe, a Constitutional entity, or any other subordinate business enterprise, corporation, or enterprise of the Mescalero Apache Tribe. Each corporation is a separate entity for purposes of waiving sovereign immunity;
- C. have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument, or any action taken in pursuance thereof or in reliance thereon;
- D. purchase, take, receive, lease or otherwise acquire; own, hold, improve, use and otherwise deal in and with personal property, or any interest therein, wherever situated;
- E. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- F. 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 Tribal or foreign corporations, associations,

partnerships, limited partnerships or individuals, or direct or indirect obligations of the United States or of any other Tribal government, state, territory, governmental district or municipality or of any instrumentality thereof;

- G. make contracts and guarantee and incur liabilities, borrow money at 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;
- H. lend money for its corporate purposes, invest and reinvest its funds, and take and hold personal property as security for the payments of funds so loaned or invested;
- I. conduct its business, carry on its operations, have offices and exercise the powers granted by this Ordinance within or without the reservation;
- J. make and alter bylaws, not inconsistent with its Articles of Incorporation or with the laws of this Tribe, for the administration and regulation of the affairs of the corporation;
- K. transact any lawful business in aid of governmental policy;
- L. indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the settlement or defense of any action, suit or proceeding, civil or criminal, in which he is involved or made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and to make any other indemnification that may be authorized by the Articles of Incorporation or by any By-Law or resolution adopted by the shareholders after notice;
- M. with approval of the Tribal Council, pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers, and employees;
- N. be a promoter, partner, member, associate, trustee or manager of any partnership, joint venture, trust or other enterprise; and
- O. have and exercise all powers necessary or convenient to affect its purposes.

20-5-9. DEFENSE OF ULTRA VIRES. No act of a corporation and no conveyance or transfer of personal property to or by a corporation is invalid because 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:

- A. in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the Tribal 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 the 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 Tribal Court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Tribal Court as a loss or damage sustained;
- B. 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 direction of the corporation.

20-5-10. CORPORATE NAME.

- A. The corporate name shall:
1. Contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of these words;
 2. Not contain any work 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; and
 3. Not be the same as, or confusingly similar to, the name of any domestic corporation existing under the laws of this Tribe or any foreign corporation authorized to transact business on the Mescalero Indian reservation, or a name the exclusive right to which is, at the time, reserved in the manner provided herein, or the name of a corporation which has in effect a registration of its corporate name as provided herein.
- B. Paragraph (3) of Subsection A of this section shall not apply if the applicant files with the President of the Mescalero Apache Tribe either:
1. The written consent of such other corporation or holder of a reserved or registered name to use the same or confusingly similar name and one or more words are added to make the name distinguishable from the other name; or
 2. A certified copy of a final decree of a Court of competent jurisdiction establishing the prior right of the applicant to the use of the name.

20-5-11. REGISTERED NAME.

- A. Any foreign corporation not authorized to transact business on the Mescalero Indian reservation may register its corporation name hereunder, if its corporate name is not the same as, or confusingly similar to, the name of any tribal corporation existing under the laws of this Tribe, or the name of any foreign corporation authorized to transact business on the Mescalero Indian reservation, or any corporate name reserved or registered hereunder.
- B. Registration shall be made by:
1. Filing with the President of the Mescalero Apache Tribe.
 - a. An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the Tribe, state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and
 - b. A certificate setting forth that the corporation is in good standing under the laws of the Tribe, state or territory in which it is organized, executed by the secretary of state of the state or territory or by the Tribal official who may have custody of the records pertaining to corporation; and
 2. Paying the President of the Mescalero Apache Tribe a registration fee in the amount of Ten Dollars (\$10.00) for each month, or fraction thereof, between the date of filing the application and December 31 of the calendar year in which the application is filed.
- C. Registration shall be effective until the close of the calendar year in which the application for registration is filed.

20-5-12. RENEWAL OF REGISTERED NAME. A corporation which has in effect a registration of its corporate name, may renew the registration from year to year by annually filing an application for

renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of One Hundred Twenty Dollars (\$120.00). A renewal application may be filed between October 1 and December 17 each year, and shall extend the registration for the following calendar year.

20-5-13. REGISTERED OFFICE AND REGISTERED AGENT. Each corporation shall have and continuously maintain on this Reservation a registered office which may be, but need not be, the same as its place of business.

20-5-14. FAILURE TO APPOINT AND MAINTAIN REGISTERED AGENT; PENALTY. If any corporation fails for a period of thirty (30) days to appoint and maintain a registered agent on the Mescalero Indian reservation or has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the President of the Mescalero Apache Tribe a statement of the change, the President of the Mescalero Apache Tribe shall notify the corporation of its delinquency by certified letter to the corporation's principal office. If the delinquency is not corrected within thirty (30) days from the date the letter is transmitted, the President of the Mescalero Apache Tribe may strike the names and records of the delinquent corporation from the files of the President of the Mescalero.

Apache Tribe. The President shall issue a notice of dissolution and set a date for hearing. Service of process and notice of striking of the name shall be by certified mail to the principal place of business of the corporation.

20-5-15. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

- A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the President of the Mescalero Apache Tribe a statement setting forth:
1. The name of the corporation;
 2. The address of its then registered office;
 3. If the address of its registered office is to be changed, the address to which the registered office is to be changed;
 4. The name of its then registered agent;
 5. If its registered agent is to be changed;
 - a. The name of its successor registered agent; and
 - b. An affidavit executed by the successor registered agent in which he acknowledges his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or an affidavit executed by the president or vice president of a corporation which is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and
 6. That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- B. The statement shall be executed by the corporation by its president or a vice president and verified by him, delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the statement conforms to the provisions hereof, he shall file the statement in his office and, upon such filing the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, becomes effective, and upon filing fulfills the requirement to file a supplemental report hereunder.
- C. Any registered agent of a corporation may resign as such agent upon filing a written notice

thereof, executed in duplicate, with the President of the Mescalero Apache Tribe, who shall forthwith mail a copy thereof to the corporation at its principal place of business as shown on the records of the President of the Mescalero Apache Tribe. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of the notice by the President of the Mescalero Apache Tribe.

- D. If a registered agent changes his or its business address to another place within this Reservation, he or it may change such address and the address of the registered office of any corporation of which he or it is the registered agent by filing a statement as required by this section except that it need be signed only by the registered agent and need not be responsive to Paragraph (5) of Subsection A of this section and must recite that a copy of the statement has been mailed to the corporation.

20-5-16. SERVICE OF PROCESS ON CORPORATION - CONDITION. Provided immunity from suit has been waived as permitted in §20-5-8 hereof:

- A. The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.
- B. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

20-5-17. CERTIFICATES REPRESENTING SHARES.

- A. The shares of a corporation shall be represented by certificates signed 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 its face:
1. That the corporation is organized under the laws of the Mescalero Apache Tribe;
 2. The name of the person to whom issued;
 3. The number and class of shares, and the designation of the series, if any, which the certificate represents; and
 4. The par value of each share represented by the certificate, or a statement that the shares are without par value.

20-5-18. LIABILITY OF THE MESCALERO APACHE TRIBE AS A SHAREHOLDER OF THE CORPORATION. The Mescalero Apache Tribe shall not be liable in any way for obligations of the corporation, either as a governing body under whose laws and ordinances the corporation is created, nor as the owner of all or a part of the stock of said corporation. Liability of the Tribe to any creditor of the corporation shall be limited to the assets in fact owned by the corporation which contracted the debt.

20-5-19. 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 a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

20-5-20. EXECUTIVE AND OTHER COMMITTEES. If the Articles of Incorporation or By-Laws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or in the Articles of Incorporation or the By-Laws of the corporation, shall have and may exercise all the authority of the board of directors in reference to

amending the Articles of Incorporations, adopting a plan of merger or consolidation, recommending to the shareholders, the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the Bylaws of the corporation. The designation of any such committee and the delegations thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

20-5-21. ACTION BY DIRECTORS WITHOUT A MEETING. Unless otherwise provided by the Articles of Incorporation or By-Laws, any action required by this Ordinance to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

20-5-22. OFFICERS. 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 the time and in the manner prescribed by the Bylaws. Other officers and assistant officers and agents deemed necessary may be elected or appointed by the board of directors or chosen in the manner prescribed by the Bylaws. Any two or more offices may be held by the same person, except the office of president and secretary. All officers and agents of the corporation, as between themselves and the corporation, shall have the authority and perform the duties in the management of the corporation as provided in the By-Laws, or as determined by resolution of the board of directors not inconsistent with the Bylaws.

SECTION 6. BOOKS AND RECORDS.

20-6-1. 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. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

20-6-2. ANNUAL CORPORATE REPORTS. Every corporation incorporated under Tribal Law shall file in the office of the President of the Mescalero Apache Tribe within thirty (30) days after the first election of directors and officers and annually thereafter on or before March 15 a report in the form prescribed by the President of the Mescalero Apache Tribe, and signed and sworn by the president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing the current status of:

- A. The name of the corporation;
- B. The location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;
- C. The names and addresses of all the directors and officers of the company and when the term of office of each expires;
- D. The character of its business and its principal place of business within or without the state; and
- E. The date for the next annual meeting of the stockholders for the election of directors.

20-6-3. APPLICATION FOR PERIOD OF EXTENSION. Any corporation may, upon application to the President of the Mescalero Apache Tribe on or after January 1 and not less than fifteen (15) days prior to the date required for the submission of a required report, petition the President of the Mescalero Apache Tribe for an extension of time in which to file the required report. The President of the Mescalero Apache Tribe may review the circumstances of the request and in its discretion extend the time for submitting the report for a period not exceeding thirty (30) days. But nothing contained in this section shall prevent the

collection of any tax penalty or interest due upon the failure of any corporation to submit the required report.

20-6-4. PRESIDENT OF MESCALERO APACHE TRIBE MAY FURNISH FORMS; RELEASE OF INFORMATION; PENALTY.

- A. The President of the Mescalero Apache Tribe may, upon application, furnish the necessary blank forms used in the preparation of the annual corporate reports.
- B. Information obtained from reports filed pursuant to the provisions hereof shall not be released unless in statistical form classified to prevent identification of particular corporations.

20-6-5. DORMANT CORPORATIONS; STATEMENT IN LIEU OF ANNUAL REPORT. Whenever any corporation is no longer engaged in active business or in carrying out the purposes of its incorporation any two (2) directors or officers thereof may unite in signing a statement to that effect; the statement shall be filed in lieu of the required annual report. Upon the filing of this statement, the President of the Mescalero Apache Tribe shall be authorized to strike the name of the corporation from the list of active corporations but this action shall not be construed in any sense as a formal dissolution of the corporation nor shall the corporation be relieved thereby from any outstanding obligation. Any corporation in this class may be fully revived by the resumption of active business and the filing of annual report by the provision of this section.

20-6-6. ANNUAL AND SUPPLEMENTAL CORPORATE REPORTS.

- A. Every tribal corporation, which is not exempted by action of the President of the Mescalero Apache Tribe shall file in the office of the President of the Mescalero Apache Tribe within thirty (30) days after the date on which its certificate of incorporation is issued by the President of the Mescalero Apache Tribe and annually thereafter on or before the fifteenth (15th) day of January, a report in the form prescribed and furnished to the corporation not less than thirty (30) days prior to such reporting date, by the President of the Mescalero Apache Tribe and signed and sworn to by the president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing:
 - 1. The current status of:
 - a. The name of the corporation;
 - b. The mailing address and street address, if appropriate or a description of the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;
 - c. The names and addresses of all the directors and officers of the company and when the term of office of each expires;
 - d. The character of its business and the address of its registered office and the principal office of the corporation, if different from the registered office; and
 - e. The date for the next annual meeting of the stockholders for the election of directors;
 - 2. The status of the last day of the preceding fiscal year of:
 - a. The amount of capital stock, authorized, subscribed, actually issued and outstanding, the amount of capital stock paid up and the amount of treasury stock held by the corporation;
 - b. The value and location of all property owned and used by the corporation;
 - c. The total gross receipts derived from its property and business and the total gross

receipts from its property and business during the preceding year; and

- d. A balance sheet of the financial condition of the corporation, including data prescribed by the President of the Mescalero Apache Tribe.
- B. When the President of the Mescalero Apache Tribe receives a report required to be filed by a corporation hereunder, he shall determine if the report conforms to the requirements of this section. If the President of the Mescalero Apache Tribe finds that the report conforms, it shall be filed. If the President of the Mescalero Apache Tribe finds that the report does not conform, he shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed herein for failure to file the report in the time provided shall not apply, if the report is corrected and returned to the President of the Mescalero Apache Tribe within thirty (30) days from the date on which it was mailed to the corporation by the President of the Mescalero Apache Tribe.
- C. The President of the Mescalero Apache Tribe shall refuse to file an annual report or a supplemental report received from a corporation which has not paid all fees.
- D. A supplemental report shall be filed with the President of the Mescalero Apache Tribe within thirty (30) days, if, after the filing of the annual report required hereunder, a change is made in:
1. The name of the corporation;
 2. The mailing address, street address or the description of the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;
 3. The name or address of any of the directors or officers of the corporation or the date when the term of office of such expires; or
 4. The character of its business and its principal place of business within or without the Reservation.
- E. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check, and which check is dishonored upon presentation.

20-6-7. CORPORATE REPORTS; AFFIRMATION; PENALTY.

- A. All reports required to be filed with the President of the Mescalero Apache Tribe pursuant hereto shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct."
- B. Any person who makes and subscribes any report required hereunder that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for a misdemeanor.

SECTION 7. BUSINESS CORPORATIONS; AMENDMENT OF ARTICLES OF INCORPORATION

20-7-1. RIGHT TO AMEND ARTICLES OF INCORPORATION. A corporation may amend its Articles of Incorporation from time to time in as many respects as may be desired, so long as its Articles of Incorporation, as amended, contain only such provisions as might be lawfully contained in original Articles of Incorporation at the time of making the amendment by the following procedure:

- A. The Board of Directors of the corporation by majority vote may recommend amendment to the Articles. Such recommendation shall be forwarded to the President of the Mescalero Apache Tribe in writing.

- B. The President of the Mescalero Apache Tribe shall either approve or disapprove the proposed amendment. His approval or disapproval should be appended to the written notice of the amendment proposed by the Board of Directors, and shall (a) if disapproved returned to the Board of Directors and (b) if approved forwarded to the Tribal Council for consideration at the next meeting of the Tribal Council.
- C. In the event that the proposed amendment is approved by a majority vote of the entire Tribal Council, at any regular or special meeting of the Tribal Council the proposed alteration or amendment originally approved by the Board of Directors of the corporation shall be deemed adopted.

SECTION 8. BUSINESS CORPORATION; MERGERS AND CONSOLIDATIONS

20-8-1. PROCEDURE FOR MERGER. Any two or more Tribal corporations may merge into one of the corporations pursuant to a plan of merger approved by the President of the Mescalero Apache Tribe and the Tribal Council. The Board of Directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

- A. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the "surviving corporation";
- B. The terms and conditions of the proposed merger;
- C. The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;
- D. A statement of any changes in the Articles of Incorporation of the surviving corporation to be effected by the merger; and
- E. Other provisions with respect to the proposed merger as deemed necessary or desirable.

20-8-2. PROCEDURE FOR CONSOLIDATION. Any two or more tribal corporations may consolidate into a new corporation pursuant to a plan of consolidation approved by the President of the Mescalero Apache Tribe and the Tribal Council. The Board of Directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

- A. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the "new corporation";
- B. The terms and conditions of the proposed consolidation;
- C. The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or any other corporation or, in whole or in part, into cash or other property.
- D. With respect to the new corporation, all of the statements required to be set forth in Articles of Incorporation for corporations organized hereunder; and
- E. Other provisions with respect to the proposed consolidation as deemed necessary or desirable.

20-8-3. APPROVAL BY SHAREHOLDERS.

- A. The Board of Directors of each corporation, upon approving a plan of merger or consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at the meeting not less than twenty (20) days before the meeting, in the manner provided herein for the giving of notice of meetings of shareholders, and, whether the meeting is an annual or a special meeting, shall state that the purpose or one of the

purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or consolidation, as the case may be, shall be included in or enclosed with the notice.

- B. At each meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares entitled to vote thereon of each corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares of each class of shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to Articles of Incorporation, would entitle such class of shares to vote as a class.
- C. After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions thereof, if any, set forth in the plan of merger or consolidation.

20-8-4. ARTICLES OF MERGER OR CONSOLIDATION.

- A. Upon approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing the articles and shall set forth:
 - 1. The plan of merger or consolidation;
 - 2. As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
 - 3. As to each corporation, the number of shares voted for and against the plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the plan, respectively.
- B. The original of the articles of merger or consolidation shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the articles conform to law, he shall, when all fees and franchise taxes have been paid:
 - 1. Endorse the originals and word "Approved" and the month, day and year;
 - 2. File the original in his office; and
 - 3. Issue a certificate of merger or consolidation.
- C. The certificate of merger or consolidation shall be returned to the surviving or new corporation, as the case may be, or its representative.

20-8-5. MERGER OF SUBSIDIARY CORPORATION.

- A. Any corporation owning at least ninety percent (90%) of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:
 - 1. The name of the subsidiary corporation and the name of the corporation owning at least ninety percent (90%) of its shares, which is hereinafter designated as the "surviving corporation"; and

2. The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part into cash or other property.
- B. A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.
 - C. Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing the articles, and shall set forth:
 1. The plan of merger;
 2. The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and
 3. The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.
 - D. On and after the thirtieth (30th) day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the articles conform to law, he shall, when all fees and franchise taxes have been paid:
 1. Endorse on the originals the word "Approved" and the month, day and year;
 2. File the original in his office; and
 3. Issue a Certificate of Merger.
 - E. The Certificate of Merger shall be returned to the surviving corporation or its representative.

20-8-6. EFFECT OF MERGER OR CONSOLIDATION. Upon the issuance of a certificate of merger or consolidation by the President of the Mescalero Apache Tribe, the merger or consolidation shall be effected. When the merger or consolidation has been effected:

- A. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;
- B. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;
- C. The surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized hereunder;
- D. The surviving or new corporation shall thereupon possess the rights, privileges, immunities and franchises of a public or private nature, of each of the merging or consolidating corporations; and all property, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and every other interest of, or belonging to, or due to, each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.
- E. The surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be

substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by the merger or consolidation; and

- F. In the case of a merger, the Articles of Incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its Articles of Incorporation are stated in the plan of merger, and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the Articles of Incorporation of corporations organized hereunder shall be deemed to be the original Articles of Incorporation of the new corporation.

SECTION 9. SALE OF ASSETS AND DISSOLUTION OF CORPORATION.

20-9-1. BUSINESS CORPORATIONS; SALE OF ASSETS. As sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not 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 in part of money or property, real or personal, including shares 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 such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- B. Written notice shall be given to each shareholder of record, whether or not entitled to vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided herein for the giving of notice of meetings of shareholders, and, whether the meeting is 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 the 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. The authorization shall require the affirmative vote of the holders of two-thirds (2/3) of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the authorization shall require the affirmative vote of the holders of two-thirds (2/3) of the shares of each class entitled to vote as a class thereon and of the total shares entitled to vote thereon;
- D. After the authorization by a vote of shareholders, the sale must be approved by majority vote of the Tribal Council and the Board of Directors. 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 contracts relating thereto, without further action or approval by shareholders.
- E. After the authorization by a vote of shareholders, 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 contracts relating thereto, without further action or approval by shareholders.

20-9-2. DISSOLUTION OF CORPORATION OWNED ENTIRELY BY THE MESCALERO APACHE TRIBE. The corporation may be dissolved by act of the Tribal Council. Upon such dissolution the assets owned by the corporation will be utilized to pay outstanding obligations, deemed to be legally owing and approved for payment by the Board of Directors of the corporation. In the event of a dispute, the validity of the obligation will be determined by the Tribal Court, unless immunity from suit has been waived, in which event any Court of competent jurisdiction, having jurisdiction shall make such determination. Upon payment of all approved obligations of the corporation, the balance of the assets, if any, will be paid

to the Mescalero Apache Tribe, a Constitutional entity. In the event the assets of the corporation are inadequate to pay all outstanding obligations, the assets of the corporation will be prorated among creditors holding approved claims after the payment of all wages and salaries due from the corporation. In order to avoid preferential treatment of any creditor, any payments made by the corporation, excepting upon secured obligations for which there is adequate security, made or paid within one hundred twenty (120) days of the date of dissolution of the corporation, may be reclaimed by action of the corporation, or its officers or Directors, and the funds redistributed in accordance with the proration set forth above.

20-9-3. 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 with the approval of the President of the Mescalero Apache Tribe, in the following manner:

- A. Articles of Dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:
 - 1. The name of the corporation;
 - 2. The date of issuance of its certificate of incorporation;
 - 3. That none of its shares has been issued;
 - 4. That the corporation has not commenced business;
 - 5. That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
 - 6. That no debts of the corporation remain unpaid; and
 - 7. That a majority of the incorporators elect that the corporation be dissolved.
- B. Duplicate originals of the Articles of Dissolution shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the Articles of Dissolution conform to law, he shall when all fees and franchise taxes have been paid:
 - 1. Endorse on the original the word "Approved" and the month, day and year;
 - 2. File the original in his office; and
 - 3. Issue a certificate of dissolution.
- C. The certificate of dissolution shall be returned to the incorporators or their representative. Upon the issuance of the certificate of dissolution by the President, the existence of the corporation shall cease.

20-9-4. VOLUNTARY DISSOLUTION BY CONSENT OF SHAREHOLDERS. A corporation may be voluntarily dissolved by the written consent of all of its shareholders. 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 the 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 all shareholders of the corporation, and
- E. A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys in fact thereunto duly authorized.

20-9-5. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

- A. The Board of Directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- B. Written notice shall be given to each shareholder or record entitled to vote at the meeting within the time and in the manner provided herein for the giving of notice of meetings of shareholders, and, whether the meeting is an annual or special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation;
- C. At the meeting, a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon;
- D. Upon the adoption of the resolution, 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 the 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 the dissolution of the corporation;
 - 5. The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
 - 6. The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class for and against the resolution, respectively.

20-9-6. FILING STATEMENT OF INTENT TO DISSOLVE. The original of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the statement conforms to law, he shall:

- A. Endorse on the original of the word "Approved" and the month, day and year;
- B. File the original in his office.

20-9-7. EFFECT OF STATEMENT OF INTENT TO DISSOLVE. Upon the filing by the President of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the President of the Mescalero Apache Tribe or until a decree dissolving the corporation has been entered by the Tribal Court.

20-9-8. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO DISSOLVE. After the filing by the President of a statement to dissolve, the corporation:

- A. Shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
- B. 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, among its shareholders according to their respective rights and interests; and
- C. At any time during the liquidation of its business and affairs, may make application to Tribal Court to have the liquidation continued under the supervision of the Tribal Court.

20-9-9. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS BY CONSENT OF SHAREHOLDERS. By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the President of the Mescalero Apache Tribe, 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 the 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 all shareholders of the corporation revoking the voluntary dissolution proceedings; and
- E. That the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys-in-fact thereunto duly authorized.

20-9-10. FILING STATEMENT OF REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS. The original of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the President of the Mescalero Apache Tribe. If the President of the Mescalero Apache Tribe finds that the statement conforms to law, he shall:

- A. Endorse on the original the word "Approved" and the month, day and year;
- B. File the original in his office.

20-9-11. EFFECT OF STATEMENT OF REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS. Upon the filing by the President of the Mescalero Apache Tribe of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

20-9-12. 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 the statement, which statement shall set forth:

- A. The name of the corporation;
- B. That the President of the Mescalero Apache Tribe has theretofore approved a statement of intent to dissolve the corporation, and the day on which the statement of intent to dissolve the corporation, and the date on which the 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 among its shareholders in accordance with their respective rights and interests; and
- 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.

20-9-13. FILING OF ARTICLES OF DISSOLUTION. The original of articles of dissolution shall be delivered to the President of the Mescalero Apache Tribe.

- A. If the President of the Mescalero Apache Tribe finds that the articles of dissolution conform to law, he shall when all fees and franchise taxes have been paid:
 - 1. Endorse on the original the word “APPROVED” and the month, day and year;
 - 2. File the original in his office; and
 - 3. Issue a Certificate of Dissolution.
- B. The Certificate of Dissolution shall be returned to the representative of the dissolved corporation. Upon issuance of the Certificate of Dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers.

20-9-14. DEPOSIT WITH TREASURER OF THE TRIBE 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 the distributive portion, shall be reduced to cash and deposited with the treasurer of the Tribe and shall be paid over to the creditor or shareholder or to his legal representative upon proof satisfactory to the President of the Tribe of his right thereto.

20-9-15. SURVIVAL OF REMEDY AFTER DISSOLUTION. The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution and any such action or proceeding by or against the corporation may be prosecuted or defended in Tribal Court by the corporation in its corporate name. The shareholders, directors and officers may take such corporate or other action as appropriate to protect the remedy, right or claim.

SECTION 10. LIQUIDATION OF CORPORATION'S ASSETS BY TRIBAL COURT

20-10-1. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND BUSINESS OF CORPORATION.

- A. The Tribal Court may liquidate the assets and business of a corporation:
 - 1. In an action by a shareholder when it is established that:
 - a. The directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
 - b. The acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 - c. The shareholders are deadlocked in voting power, and have failed, for a period which includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the

- election of their successors; or
- d. The corporate assets are being misapplied or wasted;
2. In an action by a creditor:
 - a. When the claim of the creditor has been reduced to judgment and an execution thereon returned and unsatisfied and it is established that the corporation is insolvent; or
 - b. 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;
 3. Upon application by a corporation which has filed a statement of intent to dissolve, as provided herein to have its liquidation continued under the supervision of the Court.

20-10-2. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT.

- A. In proceedings to liquidate the assets and business of a corporation, the Tribal Court may issue injunctions, appoint a receiver or receivers pendente lite, with such powers and duties as the Tribal Court, from time to time, may direct, and take other proceedings necessary 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 upon notice as the Tribal Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Tribal Court, the Tribal 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. The liquidating receiver or receivers may be subject to the order of the Tribal Court, sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of the liquidation and then to the payment of reasonable wages to employees of the corporation for work done within four (4) months of the liquidation proceedings, and then 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 the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.
- C. The Tribal Court may 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 the assets.
- D. A receiver of a corporation appointed under the provisions of this section may sue and defend in all Courts in his own name as receiver of the corporation. The Tribal Court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

20-10-3. QUALIFICATIONS OF RECEIVERS. A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a Tribal corporation and shall in all cases give bond as the Tribal Court may direct with sureties as the Court may require.

20-10-4. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. In proceedings to liquidate the assets and business of a corporation, the Tribal 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 Tribal Court may prescribe, proofs under oath of their respective claims. If the Tribal Court requires the filing of claims, it shall fix a date, which shall be not less than four (4) 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 Tribal Court 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 Tribal Court, from participating in the distribution of the assets of the corporation.

20-10-5. 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 Tribal Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

20-10-6. DECREE OF INVOLUNTARY DISSOLUTION. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of the proceedings and all debts, obligations and liabilities of the corporation 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 the costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the Tribal Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

20-10-7. FILING OF DECREE OF DISSOLUTION. In case the Court enters a decree dissolving a corporation, the clerk of the Court shall cause a certified copy of the decree to be filed with the President of the Mescalero Apache Tribe. No fee shall be charged by the President of the Mescalero Apache Tribe for the filing.

SECTION 11. BUSINESS CORPORATIONS; MISCELLANEOUS PROVISIONS.

20-11-1. POWERS OF THE PRESIDENT OF THE MESCALERO APACHE TRIBE. The President of the Mescalero Apache Tribe has the power and authority reasonably necessary to enable his office to administer the various ordinances regarding corporations efficiently and to perform the duties therein imposed upon him. In addition thereto the President of the Mescalero Apache Tribe may require the corporation, or its officers or directors, to:

- A. Maintain a duly registered agent, registered with the office of the President of the Mescalero Apache Tribe, who is available for service of process on the Reservation.
- B. File such reports and audits as he deems reasonable, after such audits or reports are demanded in writing at least thirty (30) days prior to the required delivery date thereof.
- C. Make available for inspection any and all contracts of the corporation in existence. Such contracts shall be made available within twenty-four (24) hours of demand for inspection thereof by him.
- D. Demand inspection of the corporate books. Such books may be inspected upon the premises of the corporation on the Reservation upon twenty-four (24) hours' notice. Such notice period may be shortened by specific act of the President of the Mescalero Apache Tribe when the President of the Mescalero Apache Tribe deems such action to be appropriate. When demand is made, all records of the corporation will be made available.

20-11-2. APPEAL FROM PRESIDENT OF MESCALERO APACHE TRIBE.

- A. If the President of the Mescalero Apache Tribe fails to approve any Articles of Incorporation, amendment, merger, consolidation or dissolution, or any other document required hereby to be approved by the President of the Mescalero Apache Tribe before it is filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From the disapproval, the person or corporation may appeal to the Tribal Council by filing with the Secretary of the Tribe a petition setting forth the articles or other document sought to be filed and a copy of the written disapproval thereof by the President of the Mescalero Apache Tribe, whereupon the matter shall be tried de novo by the Tribal Council, and the Council shall either

sustain the action of the President of the Mescalero Apache Tribe or direct him to take action the Council may deem proper.

- B. If the President of the Mescalero Apache Tribe revokes the certificate of authority to transact business on this Reservation of any foreign corporation, pursuant to the provisions hereof, the foreign corporation may appeal to the Tribal Council by filing with the Secretary of the Tribal Council, a petition setting forth a copy of its certificate of authority to transact business on this Reservation and a copy of the notice of revocation given by the President of the Mescalero Apache Tribe, whereupon, the matter shall be tried de novo by the Tribal Council, and the Council shall either sustain the action of the President of the Mescalero Apache Tribe or direct him to take action the Council may deem proper.

20-11-3. ISSUANCE OF CERTIFICATE OF GOOD STANDING AND COMPLIANCE. The President of the Mescalero Apache Tribe may issue a certificate of good standing and compliance if the corporation requesting the certificate has paid all franchise taxes and fees due at the time of the request.

20-11-4. CERTIFICATES AND CERTIFIED COPIES TO BE RECEIVED IN EVIDENCE. All certificates issued by the President of the Mescalero Apache Tribe in accordance with the provisions hereof, and all copies of documents filed in his office in accordance with the provisions hereof, when certified by him shall be taken and received in all Courts, public offices and official bodies as prima facie evidence of the facts therein stated, and may be filed and recorded with the respective county clerks in any state. A certificate by the President of the Mescalero Apache Tribe under his seal, as to the existence or nonexistence of the facts relating to corporation shall be taken and received in all Courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

20-11-5. FORMS TO BE FURNISHED BY THE PRESIDENT OF THE MESCALERO APACHE TRIBE. Forms for all documents to be filed in the office of the President of the Mescalero Apache Tribe may be furnished by the President of the Mescalero Apache Tribe on request therefor, but the use thereof, unless otherwise specifically prescribed by law, is not mandatory.

20-11-6. GREATER VOTING REQUIREMENTS. Wherever, with respect to any action to be taken by the shareholders of a corporation, the Articles of Incorporation require the vote of concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required hereby with respect to the action, the provisions of the Articles of Incorporation control.

20-11-7. WAIVER OF NOTICE. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions hereof or under the provisions of the Articles of Incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, is equivalent to the giving of the notice.

20-11-8. ACTION BY SHAREHOLDERS WITHOUT A MEETING. Any action required hereby 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. Such consent has the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the President of the Mescalero Apache Tribe hereunder.

20-11-9. UNAUTHORIZED ASSUMPTION OF CORPORATE POWER. All persons who assume to act as a corporation without authority to do so are jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

20-11-10. RESERVATION OF POWER. The Tribal Council reserves power to amend, repeal or modify all or any part hereof at any time and such changes shall be binding upon all corporations subject to the provisions hereof.

SECTION 12. ESTABLISHMENT OF CREDIT PRACTICES AT TRIBAL ENTERPRISES

20-12-1. CREDIT PRACTICES. All tribal enterprises that allow tribal members or employees to purchase goods or services on credit to shall take all necessary steps to eliminate the abuse of such credit practices and to regularly collect all outstanding balances in a professional business manner.

20-12-2. WITHHOLDING. The Mescalero Apache Tribal Council does hereby authorize all tribal enterprises and departments to have the amount of outstanding credit balances for goods and services withheld from the paychecks of tribal employees and dividend checks of tribal members. Provided, however:

- A. No amount of any debt shall be withheld from a payroll check or dividend distribution until the tribal enterprise or department involved in the particular collection has established a standard procedure for determining when and how the amounts of such debts will be so collected.
- B. No amount of any debt shall be withheld from a payroll check or dividend distribution until the tribal employee responsible for collecting such debts has submitted a signed affidavit to the accounting office detailing the identity of the individual who owes the amount to be retained, the total amount owed, and the goods or services that were provided to create the credit obligation.
- C. All tribal members and tribal employees affected by such retention of funds shall have the right to seek judicial verification of the amount so retained.

SECTION 13. TRIBAL PREFERENCE IN HIRING

20-13-1. DEFINITIONS.

- A. "Employee" means any person paid wages, salary, or stipend by the Mescalero Apache Tribe or any of its entities and enterprises.
- B. "Employer" means the Mescalero Apache Tribe, its subdivisions, entities and enterprises, including, without limitation, the Inn of the Mountain Gods Resort and Casino and Mescalero Forest Products.
- C. "Indian Preference" means the process of selecting a person for employment based upon a preference applied when two or more persons are considered qualified employee applicants following the review of the total pool of applicants for a job.
- D. "Meets the Qualifications" means that the applicant or employee possesses the skills, education, experience or other job-related requirements stated in the job description or job announcement.
- E. "Enrolled Member" means a person who is officially enrolled as a member of the Mescalero Apache Tribe.
- F. "Affiliate" means the legally married spouse or child of an enrolled member of the Mescalero Apache Tribe. A child shall be considered an affiliate under this section only if the name of an Enrolled Member appears on the child's birth certificate.
- G. "Other Indian" means any person who is enrolled as a member of a federally recognized or state recognized Indian tribe or any other Tribe recognized by the Mescalero Apache Tribal Council.
- H. "Manager" shall include departmental managers, general managers, chief operating officers or other individuals who have been delegated hiring authority.
- I. "President" means the President of the Mescalero Apache Tribe.

20-13-2. ESTABLISHING INDIAN PREFERENCE. Indian preference shall be given according to Section Two below when it is established that the employee or applicant meets the qualifications set forth in the job description or the job announcement. If the person has the qualifications as stated, he or she is

eligible for the position and shall not be denied employment even if another person at a lower preference has higher qualifications than are necessary for the position. If more than one person at the same preference level meets the qualifications, the decision-makers shall have discretionary power. Accordingly, when preparing job descriptions or job announcements care should be taken to establish qualifications that fit the desired needs of the position and not to deliberately overstate the qualifications necessary for the job.

20-13-3. UNNECESSARY JOB QUALIFICATIONS PROHIBITED. The practice of implementing job qualifications or personnel requirements which are not necessary to the position and which act as barriers to employment preference is hereby prohibited and enjoined.

20-13-4. ORDER OF PREFERENCE. The following order of preference shall be given when offering employment opportunities of any kind including hiring, promotions, transfers, training, layoffs, interim appointments, and all other aspects of employment:

- A. Enrolled member.
- B. Affiliate
- C. Other Indian.

20-13-6. COVERAGE. This Ordinance shall be binding on all entities, enterprises, and organizations operating under the Mescalero Apache Tribe, including, without limitation, the Inn of the Mountain Gods Resort and Casino and Mescalero Forest Products, and shall supersede all previous actions and policies regarding Indian preference in employment.

20-13-7. ENFORCEMENT. The President of the Mescalero Apache Tribe shall have the responsibility and authority to assure that the provisions of this ordinance are implemented and enforced.

20-13-8. GRIEVANCE. Any individual who feels that he or she was wrongfully denied employment pursuant to the terms of this Ordinance shall notify the President of any such grievance. Said grievance shall be filed with the President not later than ten (10) days after an individual is notified that he or she has not been hired for a job for which he or she had applied.

20-13-9. DETERMINATION OF GRIEVANCE BY PRESIDENT. Upon being presented with a grievance under this Section, the President shall determine whether a violation of this Ordinance has occurred. If the President of the Mescalero Apache Tribe determines that there was a violation of this Ordinance, the President will inform the appropriate Manager of this decision. The Manager will discuss the matter with the party or parties involved and will make a good faith effort to reach an agreement with said applicant and to ultimately fill the position with an applicant whose selection complies with this Ordinance. If an agreement cannot be reached, the President will resolve the situation in a manner that complies with the Ordinance. The President has the authority to take any action necessary, including the authority to remove an individual who was not hired in conformity with this Ordinance and to replace said individual who does comply with this Ordinance. The President also has the authority to take appropriate punitive action against any individual who fails to comply with the terms of this Ordinance.

20-13-10. APPEAL TO TRIBAL COUNCIL. If an individual is not satisfied with the final decision of the President, that individual may appeal the President's decision to the Mescalero Apache Tribal Council, which may take whatever action that it deems necessary to implement the requirements and spirit of this Ordinance.

SECTION 14. REGULATION OF BOXING.

20-14-1. BOXING COMMISSION ESTABLISHED. There is hereby established the Mescalero Apache Tribal Boxing Commission (herein, the "Boxing Commission" or "Commission").

20-14-2. PURPOSE AND AUTHORITIES OF COMMISSION.

- A. The Mescalero Apache Tribal Boxing Commission shall regulate, by licensure, permitting, and rules and regulations, all professional boxing, sparring, wrestling, and other unarmed combat events held within the boundaries of the Mescalero Apache Reservation; provided, however, that all rules and regulations promulgated by the Commission shall not be in effect unless and until approved by Resolution of the Mescalero Apache Tribal Council.
- B. For the purposes of this Chapter, a "professional" event means a contest between individuals for financial compensation.
- C. The Commission shall also have the authority to regulate, at its discretion, amateur boxing, sparring and wrestling events held within the boundaries of the Mescalero Apache Reservation.

20-14-3. MEMBERSHIP OF COMMISSION.

- A. Initial Composition. The Mescalero Apache Tribal Boxing Commission shall initially consist of one (1) member (the "Initial Member"), who shall be appointed by the Tribal President, subject to confirmation by a majority vote of the Mescalero Apache Tribal Council.
- B. Regular Composition. Commencing on April 1, 2009, the Mescalero Apache Tribal Boxing Commission shall be comprised of three (3) members, each of whom shall be enrolled members of the Mescalero Apache Tribe. Commission members shall be appointed by the President of the Mescalero Apache Tribe, subject to confirmation by a majority vote of the Mescalero Apache Tribal Council. Each member shall serve at the pleasure of the Mescalero Apache Tribal Council and shall be subject to removal by majority vote of the Mescalero Apache Tribal Council, for any reason or for no reason. Removal by the Mescalero Apache Tribal Council shall be final.

20-14-4. TERM OF MEMBERSHIP. Commission members, except for the Initial Member, shall serve for three (3) year terms.

20-14-5. MEETINGS. The Commission shall meet as needed. The Commission may hold emergency meetings at the call of the Chairperson, or pursuant to a written request to the Chairperson for a meeting signed by a majority of the Commission members.

20-14-6. CHAIRPERSON. At its first meeting in any calendar year, the Commission shall elect a Chairperson.

- A. The Chairperson shall be responsible for the operation of the meetings, for calling meetings, for the day-to-day operation of the Commission, and for other duties as assigned by the Commission or by the Mescalero Apache Tribal Council.
- B. The Chairperson shall appoint a Secretary to take minutes of all Commission meetings. The Secretary may either be a Commission member or may be a Non-Member at the Chairperson's discretion.

20-14-7. EVENT PERMITS.

- A. No person or entity may provide a location for, organize, advertise, sponsor, or participate in a professional boxing, wrestling, or sparring event within the boundaries of the Mescalero Apache Reservation unless the event has received an Event Permit from the Mescalero Apache Tribal Boxing Commission
- B. No permit shall be granted unless the person or authorized representative of the entity seeking such a permit provides adequate assurances for limitation of liability of the Mescalero Apache Tribe and the Commission with regard to claims which might arise out of a permitted event.
- C. Anyone found in violation of this provision is subject to the penalties described herein.
- D. Subject to the limitations set forth herein, the Commission shall have the authority to promulgate and publish rules and regulations for the issuance, denial, suspension and revocation of such

permits, and to hear appeals of its denials, suspensions, or revocations of such permits.

20-14-8. LICENSURE OF EVENT PARTICIPANTS.

- A. No person or entity may participate as a combatant, judge, referee, timekeeper, trainer, physician, promoter, manager, or matchmaker in any event required to be permitted by this Chapter without being duly licensed by the Commission.
- B. The Commission may, at its discretion, require licensure for other persons or entities who participate in any way in any event required to be permitted by this Chapter.
- C. Licensing requirements for combatants may include physical examinations, drug and HIV testing, and criminal background checks.
- D. Licensing requirements shall include adequate assurances for limitation of liability of the Mescalero Apache Tribe and the Commission with regard to claims by a licensee which might otherwise arise out of a permitted event.
- E. Anyone found in violation of this provision is subject to the penalties described herein.
- F. Subject to the limitations set forth herein, the Commission shall have the authority to promulgate and publish rules and regulations for the issuance, denial, suspension and revocation of such licenses, and to hear appeals of its denials, suspensions, or revocations of such licenses.

20-14-9. OTHER COMMISSION RULES AND REGULATIONS.

Subject to the limitations set forth herein, the Commission shall promulgate and publish any other rules and regulations which it deems in its discretion necessary, or which the Mescalero Apache Tribal Council deems necessary, to assure the lawful, safe, and orderly operation of all professional boxing, wrestling, sparring and other unarmed combat events held within the boundaries of the Mescalero Apache Reservation.

20-14-10. PENALTIES.

The Mescalero Apache Tribal Court, upon petition by an attorney duly authorized to represent the Commission, and following a hearing on the matter, may levy a civil penalty of up to Five Thousand Dollars (\$5,000.00) for each violation of the event permitting, licensing, or other rules and regulations of the Commission.

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CHAPTER 21

BUILDING CODES

SECTION 1. COMPLIANCE CODE.

21-1-1. PURPOSE AND POLICY.

- A. Purpose. The purpose of this chapter is to provide fair and efficient means of enforcing the various zoning, building, electrical, plumbing and related codes, including the Community Improvement Ordinance, which have been or may be hereafter adopted for the Reservation.
- B. Compliance Policy. It shall be the duty of the President and Building Code Supervisor 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.

21-1-2. APPLICATION. This Chapter shall control the administration of the Zoning Code (Chapter 17, §17-11-1 through §17-11-12); Electrical Code (Chapter 21, §21-3-1 through §21-3-7); the Plumbing Code (Chapter 21, §21-4-1 through §21-4-10); the Building Code (Chapter 21, §21-2-1 through §21-2-7); the Community Improvement Ordinance (Chapter 17, §17-10-1 through §17-10-12); and such other codes as may be added from time to time.

21-1-3. CODE SUPERVISOR.

- A. Position Created. There is hereby created the position of Building Code Supervisor. The position shall be filled by a person appointed by the President. The position may be held on a part-time basis.
- B. Qualifications. The person employed as Building Code Supervisor shall be knowledgeable in the field of building construction. He shall possess or be able to acquire 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 keep informed about new construction and alterations on the Reservation.
 3. He shall maintain records concerning code compliance adequate to meet the annual reporting requirements of the Department of Housing and Urban Development.
 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.

21-1-4. ASSISTANT CODE SUPERVISORS. The President is hereby authorized to deputize as Assistant Code Supervisors such other persons as the President may determine. Selected persons in various districts may be given supervisory jurisdiction for their village or district. All such persons shall work under the supervision of the Code Supervisor.

21-1-5. BUILDING PERMITS.

- A. Permits Are Required:
 1. Prior to the construction or major alteration of any dwelling unit located in a Community Improvement Area, as defined in §17-10-2, or in an area designated in §17-11-4 of the

Zoning Code.

2. Prior to the installation or major alteration of electrical service, as defined in the Electrical Code.
 3. Prior to the installation or major alteration of any water or sewer facility, as defined in the Plumbing Code.
 4. Prior to the construction of any non-dwelling unit, other than a barn, farm shed or related farm structure.
- B. APPLICATION. In every case in which a Permit is required, the owner shall apply to the Code Supervisor for the necessary Permit or Permits.
- C. CONTENTS. Every Application for a Permit shall state the type of structure or facility to be built or altered, the approximate cost, the location, the method of construction or alteration, and the name of the proposed contractor, if any. The Code Supervisor may require the applicant to submit such plans, drawings and specifications as are necessary for him to determine whether the Application should be approved.
- D. APPROVAL. If the Application shall show to the satisfaction of the Code Supervisor that the proposed alteration or construction will be in accordance with all outstanding codes and ordinances, he shall approve the Application and issue the necessary Permit or Permits.
- E. MODIFICATION AND APPEAL. If the Application is denied, the applicant may modify the Application as necessary to secure approval; or he may file an action against the Tribe to require the Code Supervisor to issue a Permit. If, after a hearing, it is found that the Application is in conformity to all outstanding codes and ordinances, the Code Supervisor shall issue a Permit.

21-1-6. RENTAL UNITS.

- A. The owner of every building on the Reservation which is leased or subleased for the purpose of human habitation, where the monthly rental exceeds Twenty Dollars (\$20.00) per month, shall within thirty-six (36) months from the date of this Act:
1. Provide such building with water and sewage facilities and electrical service equivalent to that required in Community Improvement Areas, and
 2. Repair and recondition such buildings as necessary to provide a safe, sound structure, resistant to weather, and meeting, insofar as possible, the standards of the Building Code applicable to Community Improvement Areas.
- B. Every building on the Reservation which is leased or sub-leased for the purpose of human habitation, where the monthly rental is Twenty Dollars (\$20.00) or less, shall be repaired and reconditioned as necessary to provide a safe, sound structure, resistant to the weather.
- C. If the owner of any building shall fail to comply with this Section within the time specified, and the building is located on Tribal land, the building may be forfeited and become the property of the Tribe after notice and hearing.

21-1-7. ENFORCEMENT.

- A. COMPLAINTS. If it appears that a person is violating any of the codes subject to this chapter, or has begun any construction or major alteration for which a Permit is required without first having obtained a Permit, the Tribal Council and Code Supervisor, any Assistant Code Supervisor designated under this Section, or any person aggrieved may file a Complaint in a Court of appropriate jurisdiction in the name of the Tribe to require such person to cease and desist from the alleged violation, and to take such corrective action as may be necessary.

- B. **CORRECTIVE ACTION.** If the action is brought in Court, the Court shall promptly give notice to all interested parties and hold a hearing upon such Complaint. If it appears that the defendant is violating one or more of the codes or is building without a Permit, the Court shall enter an Order requiring such person to cease and desist and to take such corrective action as may be necessary within a specified time.
- C. **PENALTY.** Failure to obey a Court's Order shall subject the defendant to prosecution for contempt of Court.

SECTION 2. RULES AND REGULATION FOR CONSTRUCTION OF BUILDINGS

21-2-1. PURPOSE. The purpose of this Section is to establish uniform rules and regulations for the construction of buildings within the exterior boundaries of the Mescalero Apache Indian Reservation.

21-2-2. LIMITATIONS. This Section is not intended, nor shall it be construed, to create a duty on the part of the Tribe or its officials, employees or agents, to protect the health, safety or economic interests of any person or entity, and no person or entity shall have the right to rely on the Code, or any action taken or not taken hereunder, as a basis to assert any claim for any loss, damage or expense against the Tribe, its officials, employees or agents.

21-2-3. ADOPTION BY REFERENCE. By reference, the latest addition of the following building codes and amendments are hereby adopted:

- A. National Fire Protection Association (NFPA) 101, Life Safety Code (as applicable to new construction);
- B. National Fire Protection Association (NFPA) 70, National Electric Code;
- C. International Council on Codes (ICC): International Building Code;
- D. International Council on Codes (ICC): International Plumbing Code;
- E. International Council on Codes (ICC): International Mechanical Code;
- F. International Council on Codes (ICC): International Residential Code for One and Two Family Dwellings;
- G. International Energy Conservation Code.

21-2-4. COPIES. A copy of each code listed above and amendments thereto shall be kept on file at the Tribal Administrative Offices.

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CHAPTER 22

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CHAPTER 23

EDUCATION ASSISTANCE PROGRAMS

SECTION 1. GENERAL

23-1-1. PURPOSE. The purpose of the Tribal Scholarship Program funds are to assist Tribal members in meeting higher education costs that cannot be met through other programs or resources. Program funds are to be used for unexpected direct school-related purposes only.

23-1-2. SOURCE OF SCHOLARSHIP FUNDS. A source for the scholarship funds shall be the revenue from ATM machines at the Inn of the Mountain Gods Resort and Casino. These funds shall remain segregated and shall not be transferred into the general fund, but shall only be used as specifically authorized by the Tribal Council.

23-1-3. ELIGIBILITY. Eligibility for the Scholarship Program is limited to Tribal members as defined in the Revised Constitution of the Mescalero Apache Tribe at Article IV, Sections 1 through 5. An applicant's name must appear on the Tribal Census roll.

23-1-4. ADMINISTRATIVE AUTHORITY. The Mescalero Apache Education Department, in conjunction with the Scholarship Committee and the Tribal Council, where required herein, shall have the authority to administer all programs under this Chapter.

23-1-5. ESTABLISHMENT OF THE SCHOLARSHIP COMMITTEE.

- A. The Scholarship Committee shall be appointed by the President of the Mescalero Apache Tribe and those appointments shall be confirmed by the Tribal Council.
- B. The Scholarship Committee shall consist of two (2) representatives from the Education Department in addition to the members of the Community Services Committee from the Mescalero Apache Tribal Council.

23-1-6. SINGLE CAREER GOAL. The Scholarship Program shall fund one career goal for each student. Furthermore, funds shall only be used for a single degree program at each of the following levels: associate, bachelor, master and doctoral.

23-1-7. AUTHORIZED PROGRAMS. Funds shall only be used to pay for classes relevant to a curriculum or degree plan with attendance at a college, university, community college, or junior college that is accredited by the North Central Accreditation Association or other federal or state accreditation program.

23-1-8. CAREER COUNSELOR.

- A. A career counselor may be appointed by the Scholarship Program to visit students in grades 9 through 12 at the Mescalero Apache School, Tularosa Schools, Ruidoso Schools, and Cloudcroft Schools to advise students, assist students in the college application process when funding allows.
- B. A part-time counselor may be appointed by the Scholarship Program to visit Program students on campuses within the State of New Mexico during the school year to assist them in resolving problems of a personal, social and/or academic nature.

23-1-9. TUTORIAL SERVICES. The Program may assist, when funding allows, in paying for tutorial services to students participating in the Scholarship Program if such services are not available for students through their university or college. These services may be arranged through the school counselor or advisor or through campus Native American student programs at the school the Program student is attending.

23-1-10. SCHOOL TRIPS.

- A. The Scholarship Program may pay the cost of school trips, whether at the primary, secondary, or college level under the following circumstances:
 - 1. When school officials provide class credit for the trip;
 - 2. If Tribal officials authorize the trip;
 - 3. For primary and secondary school students who are not eligible for Johnson-O'Malley funds; or
 - 4. For college students who are either juniors or seniors.
- B. Up to sixty (60) percent of the cost for an eligible student may be paid so long as the amount does not exceed One Thousand Dollars (\$1,000.00).
- C. Trips outside the United States shall not be eligible for Scholarship Program funds.
- D. If funds are not utilized for the purpose intended, the entire amount must be repaid to the Program.

23-1-11. HEALTH CARE EXPENSES.

- A. Program funds shall not be used to pay health care expenses for students who must leave the Reservation for educational purposes.
- B. All students shall be encouraged to apply for:
 - 1. Indian Health Service (IHS) services; and
 - 2. Private health insurance at the student's own expense.

23-1-12. GED CLASSES. Funds shall not be used to pay for General Education Diploma (GED) classes or testing since funds are available from other sources for these classes.

23-1-13. TRAINING FUNDS. Tribal Scholarship funds shall not be used to supplement Tribal Education Department or program training funds. Each Tribal Education Department or program is responsible for its own training funds.

SECTION 2. SCHOLARSHIP PROGRAM.

23-2-1. FUNDS ARE SUPPLEMENTAL IN NATURE. Funds provided under the Scholarship Program shall only supplement other educational financial aid programs.

23-2-2. FUNDS TO BE CONSIDERED LOAN UNTIL COMPLETION OF PROGRAM. All funds awarded under this program shall be considered a loan until the student presents acceptable evidence of successful completion of an approved education program by receiving a certificate, diploma, or degree, for which the funds were advanced. After the Tribal Education Director has received the certificate, diploma, or degree, the Director shall change the status of the Program funds from a loan to a grant.

23-2-3. REPAYMENT OF FUNDS.

- A. If a student does not complete his/her studies, that student shall be liable for repayment of all funds awarded under the Scholarship Program after three (3) years of nonattendance upon demand by the Tribe.
- B. Repayment may be arranged through payroll deductions or direct pay.
- C. If no other repayment arrangements have been made or successfully implemented, dividend deductions of no more than one-half (1/2) the total dividend amount shall be made until the loan is paid in full. In the absence of dividends, the Scholarship Program may take action against the student in the Mescalero Apache Tribal Court.

23-2-4. PURPOSES FOR WHICH FUNDS MAY BE USED.

- A. Funds awarded under this program may only be used toward direct educational cost such as the following:
 - 1. Tuition and fees;
 - 2. Room and board;
 - 3. Transportation costs, except as provided in 23-2-4 (B) below;
 - 4. Books and supplies; and
 - 5. Other direct education costs.
- B. Funds shall NOT be used to pay for indirect educational costs such as:
 - 1. Child care expenses;
 - 2. Personal vehicle maintenance or repairs;
 - 3. Telephone installation and monthly billing;
 - 4. Medical and prescription costs; and
 - 5. Other costs deemed unrelated to direct education by the Committee.
- C. The Scholarship Program shall not pay for pre-registration costs.

23-2-5. SUMMER SESSIONS.

- A. It is the recommendation of the Scholarship program that the primary source of funding for undergraduate summer sessions be a Bureau of Indian Education (BIE) Higher Education grant, as long as sufficient funds are available under that program.
- B. The Scholarship Program may provide funding for undergraduate summer enrollment when funds are available, but only as a secondary source.

23-2-6. REPEAT CLASSES. Funds under this program shall pay for the two repeat classes a student is required to take for any reason. Any further repeat classes, whether for the same class or another, shall not be funded by the Scholarship Program.

23-2-7. VOCATIONAL OR TECHNICAL SCHOOLS. The cost of technical training, including stand-alone business schools, has become prohibitive; therefore, the Scholarship Program will no longer assist students with the cost of attending them.

23-2-8. INCENTIVE GRANTS. Incentive grants of Two Hundred Dollars (\$200.00) per semester:

- A. May be made to full-time undergraduate students who have earned at least twelve (12) credit hours and a grade point average (GPA) of at least 3.5 on a 4.0 scale for the preceding semester. Developmental classes may not be included in the number of credit hours earned in the context of incentive grants.
- B. May be made to graduate students who have earned at least nine (9) credit hours and a grade point average (GPA) of at least 3.5 on a 4.0 scale for the preceding semester
- C. Shall not be considered loans, and do not have to be repaid, if a student does not complete the education program for which the grant was awarded.

SECTION 3. SCHOLARSHIP APPROVAL, DURATION, AND AMOUNT

23-3-1. APPROVAL OF FUNDING.

- A. The Education Department shall review all applications and make recommendations to the

Committee.

- B. The Committee shall review the applications for funding under this program in light of the recommendations provided by the Education Department and approve funding according to the needs of the student and the mandates of this Chapter.

23-3-2. STUDENT STATUS AND DURATION OF SCHOLARSHIP.

- A. Full-time undergraduate students:
 - 1. Are those students who have registered for twelve (12) credit hours or more per semester or trimester; and
 - 2. Shall be assisted for a maximum of six (6) years or a total of twelve (12) semesters or eighteen (18) trimesters.
- B. Full-time graduate students:
 - 1. Are those students who have enrolled in nine (9) credit hours per semester in order to obtain a master's or other graduate degree; and
 - 2. Shall be assisted for a maximum of four (4) years or a total of eight (8) semesters.
- C. Part-time students:
 - 1. Are those students who have registered for between one (1) and eleven (11) credit hours per semester or trimester; and
 - 2. Shall be encouraged to enroll full-time after three (3) years as a part-time student.
- D. Part-time graduate students:
 - 1. Are those who have enrolled for eight (8) or less credit hours per semester; and
 - 2. Shall be encouraged to enroll full-time after three (3) years as a part-time graduate student.

23-3-3. SCHOLARSHIP DISBURSEMENTS. Scholarship disbursements will be determined by the needs analysis and the availability of funding.

- A. The maximum amount disbursed to undergraduate students per semester is Five Thousand Dollars (\$5,000.00). First-semester freshmen will receive partial payment until the student submits mid-term grades to the Education Department after which any additional funding to which the student is to be granted may be provided.
- B. The maximum amount disbursed to a graduate student is Five Thousand Dollars (\$5,000.00).
- C. In determining the amount each student will receive, consideration will be given to each student's character, interests, ability, and academic rank or GPA.
- D. In determining the amount to be awarded to freshmen undergraduate students, consideration will be given to the applicant's high school GPA, academic rank, character, interests, ability, and the applicant's interview with the Committee.
- E. Awards shall be adjusted such that students not eligible for Pell grants or other grants or scholarships contribute at least Eight Hundred Dollars (\$800.00) toward the total cost of attending their chosen program.

23-3-4. APPLICANT INTERVIEWS.

- A. All entering freshman applicants shall meet personally with the Committee prior to the Committee determining eligibility for the program and the amount of the award. The Committee

shall review the student's application and advise the student as to scholarship application process and school selection matters.

- B. The Education Department Director and Assistant Director and/or the Committee may request a meeting with other applicants as well.
- C. Meetings with applicants shall commence in April each year prior to the academic year for which funding is sought.

23-3-5. DISBURSEMENT OF FUNDS

- A. The Committee shall direct disbursement of funds once it has selected recipients from the applicant pool.
- B. The Education Department shall contact each student's technical school, college, or university to arrange for the timely payment of tuition and other fees by the Department directly to such technical school, college, or university. There may be cases where the scholarship funds available to a particular student are greater than the tuition and fees that can be paid directly to the school (for example, if tuition is paid in full and there is still money available to him or her but the student must live off-campus and pay a non-school affiliated landlord). In such cases, any excess amount shall be paid to such student, for the payment of those expenses listed in Section 23-2-4(A), one (1) week prior to the first day of class with the exception of incoming freshmen as noted above at 23-3-3(A) (who will receive partial payment at the beginning of the semester and the remainder after mid-term grades are submitted to the Education Department).
- C. The Committee may elect to provide the funding in partial payments throughout the semester or academic year at its sole discretion.
- D. No advances or early disbursements shall be made.

23-3-6. SUPPLEMENTAL LOANS. No additional loans shall be made in excess of the amount initially approved and designated by the Committee.

SECTION 4. SCHOLARSHIP APPLICATIONS

23-4-1. GENERAL REQUIREMENTS

- A. Each applicant must be a high school graduate or the recipient of a GED.
- B. Each applicant must meet all undergraduate or graduate program entrance requirements.
- C. Undergraduate students taking six (6) or more credit hours must apply for other available financial aid such as a federal Pell grant, and other state, federal or private grants or scholarships and must submit a Free Application for Federal Student Aid (FAFSA) each year for which the applicant is applying for funds from the Scholarship Program.
- D. Graduate students must apply for any grants, scholarships or fellowships available to graduate students such as scholarships offered by the American Indian Graduate Center.

23-4-2. APPLICATION REQUIREMENTS. All first time applicants are required to submit the following documents or forms to the Education Department:

- A. A completed and signed Scholarship Application Form which the applicant may obtain from the Education Department;
- B. A signed Privacy Statement Form which may be obtained from the Education Department and which authorizes the Education Department to solicit information, personal or educational data about the student;
- C. A copy of the Student Aid Report (SAR) which the student will receive after submitting the

FAFSA;

- D. A completed Needs Analysis Form (see § 23-4-4 below);
- E. A signed Agreement Form provided by the Education Department stating that the student has read and agrees to all the terms of this Chapter;
- F. A letter from the applicant stating the applicant's educational objectives;
- G. Two (2) letters of recommendation from individuals such as teachers, supervisors, or coworkers who know the applicant well;
- H. An official final transcript from the applicant's high school or a copy of the applicant's GED certificate or an official college transcript if the applicant attended college prior to applying for funding through the Scholarship Program;
- I. A current photograph of the applicant;
- J. A signed Grade Release Form provided by the Education Department for each semester the student applied for funding;
- K. Proof of admission to the college or university for which funding is being requested; and
- L. A Contract Health Service Information Form provided by the Education Department if the applicant will be attending a college or university outside the Tribe's service area.

23-4-3. RENEWAL REQUIREMENTS.

- A. Each applicant shall be required to renew his/her application at the end of the individual funding cycle by resubmitting certain documents listed in § 23-4-2, specifically, the:
 - 1. Scholarship Application Form;
 - 2. Signed Privacy Statement Form;
 - 3. Student Aid Report;
 - 4. Needs Analysis Form;
 - 5. Agreement Form;
 - 6. Grade Release Form;
 - 7. Contract Health Information Form; and
 - 8. An official transcript from the previous semester.
- B. If a student has transferred to another college or university, the student must also provide proof of admission to the new institution to the Education Department.

23-4-4. RECOMMENDATION TO MAINTAIN APPLICATION ON FILE. Although a student may believe that he or she does not need funds from the Scholarship Program, it is recommended that he or she maintain an application on file by submitting a new application each year in the case that such funding is in fact needed at a later date. Applications will be considered only when filed in accordance with the deadlines listed below.

23-4-4. NEEDS ANALYSIS FORM.

- A. The Education Department shall prepare and make available to each applicant a Needs Analysis form which each applicant must submit to his/her campus financial aid office.
- B. The applicant shall request that the financial aid office calculate the needs of the applicant for the coming year or semester based on the results of the SAR and the cost of tuition, books, fees, and

supplies.

- C. The applicant shall either return the form to the Education Department personally or request that the financial aid office do so.
- D. The Committee shall not consider certain information provided on the Needs Analysis Form, specifically, the expected parent contribution versus any expected student contribution in determining the amount of funding that will be provided.

23-4-5. APPLICATION DEADLINES.

- A. Applicants shall submit all application materials according to the following schedule:
 - 1. June 1st if students are applying for funding for the entire academic year;
 - 2. June 1st if students are applying for the fall semester only;
 - 3. November 1st if students are applying for the spring semester only; and
 - 4. April 1st if students are applying for summer terms.
- B. No application materials will be accepted after the dates noted.

SECTION 5. CONDITIONS OF AWARDS

23-5-1. REPORTING OF FINAL GRADES

- A. All students receiving funds under the Scholarship Program shall request that official transcripts be sent to the Education Department as soon as the term is completed.
- B. No facsimiles or copies of transcripts shall be accepted.
- C. No further funds will be disbursed until the official transcript is received by the Education Department.

23-5-2. GRADE POINT AVERAGE.

- A. Undergraduate students shall maintain a 2.0 GPA based on a 4.0 scale throughout the terms for which they receive funding, whether attending full-time or part-time.
- B. Graduate students shall maintain a 3.0 GPA throughout the terms for which they receive funding, whether attending full-time or part-time.

23-5-3. CREDIT HOURS.

- A. Full-time undergraduate students must be registered for twelve (12) credit hours or more during the time they receive funding from the Scholarship Program.
- B. Full-time graduate students must be registered for nine (9) credit hours or more during the time they receive funding from the Scholarship Program.
- C. Part-time students (whether undergraduate or graduate) have no credit hour requirement.

23-5-4. PROBATIONARY PERIOD. If a student does not meet the GPA or credit hour requirements:

- A. The student shall be funded for another semester, but shall be on probation.
- B. The Committee may refer the student to on-campus financial aid services.
- C. The Committee may suggest the student take a semester off.

23-5-5. SUSPENSION AFTER PROBATIONARY PERIOD. If a student on probation does not attain the requisite GPA or enroll for the required number of credit hours during the probationary period, the

student shall not receive further funding from the Scholarship Program. Costs during the period after termination and until eligibility is regained must be met from other sources.

23-5-6. REGAINING ELIGIBILITY AFTER SUSPENSION. In order to be eligible for further funding under the Scholarship Program, a student who has been suspended following a probationary period must achieve a GPA of 2.0 or higher for the number of credit hours for which the student originally received funding.

23-5-7. SCHOOL DISCIPLINARY ACTION. Student behavior such as abuse of alcohol and/or drugs resulting in disciplinary action by campus or off-campus authorities shall result in the immediate termination of funding under the Scholarship Program.

23-5-8. FALSIFIED DOCUMENTS.

- A. Falsification or forgery of any documents or forms required herein shall not be tolerated.
- B. Should the Education Department Director or the Committee have reasonable suspicion that any documents have been falsified or forged, there will be immediate revocation of any approved or disbursed funds.
- C. Any documents or forms found to have been falsified or forged in the application process shall result in the student repaying all funds disbursed and the student shall not be allowed to re-apply for funding under the Scholarship Program.

23-5-9. WITHDRAWAL AND REPAYMENT. All students who withdraw from a semester for which Program funding was awarded shall repay all funds as provided in § 23-2-3 prior to the student being eligible for consideration for any further funding.

23-5-10. APPEAL PROCESS FOR SUSPENSION OR REPAYMENT OF FUNDING.

- A. Any student may appeal a suspension or finding that repayment is needed where he or she:
 - 1. Is hospitalized due to a severe medical issue;
 - 2. Suffers from a severe medical condition that prevented him or her from attending classes;
 - 3. Has a member of the student's immediate family that is hospitalized or suffers from a severe medical condition requiring the student to miss classes or withdraw to care for such family member; or
 - 4. Has suffered a death within the student's immediate family.
- B. For purposes of this Section, immediate family shall include a student's spouse, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, aunt, uncle, nephew, niece, grandmother, grandfather or grandchildren.
- C. A student may initiate the appeal process by submitting the following documents to the Education Department:
 - 1. A letter containing a written explanation of the relevant circumstances and requesting an appeal;
 - 2. A copy of current registration documents;
 - 3. An official transcript; and
 - 4. Invoices for tuition, fees, books, and other education-related costs.
- D. The student shall be prepared to pay all fees if the appeal fails.
- E. The Education Department shall review all submitted documentation and make a written recommendation

- F. The Education Department shall forward all documents and its recommendation to the Committee for review and a final determination.
- G. The Education Department shall inform the student of the Committee's final determination in writing as soon as possible.

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CHAPTER 24

TRIBAL GOVERNMENT

SECTION 1. LEGISLATIVE AND EXECUTIVE POWERS.

24-1-1. POWERS. The legislative powers of the Mescalero Apache Tribe are vested in the Mescalero Apache Tribal Council. The powers of the government of the Mescalero Apache Tribe are divided into three distinct departments, the Legislative, the Executive and the Judicial. No person or group of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as the Constitution may otherwise expressly direct or permit.

24-1-2. TRIBAL COUNCIL AND EXECUTIVE POWERS. The Mescalero Apache Tribal Council has the power and the authority to regulate its own procedures. The President of the Mescalero Apache Tribe shall exercise the powers as the Chief Executive Officer of the Tribe as set forth in Article XXII of the Constitution.

SECTION 2. COUNCIL BY-LAWS.

24-2-1. BY-LAWS CONTROL. The following By-Laws shall govern the conduct and procedures of the Tribal Council members:

- A. No member of the Council shall discuss or vote on any matter or issue in which he has a direct or substantial indirect financial interest.
- B. No member of the Council shall discuss or vote on any issue or matter in which he has a personal interest which arises out of family, kinship or marriage ties. See §24-4-1 for definition of kinship.
- C. No member of the Council shall represent any individual member of the Tribe before the Tribal Courts, within the jurisdiction of the Mescalero Apache Tribe.
- D. No member of the Council shall represent or purport to represent the Mescalero Apache Tribe beyond the exterior boundary of the Reservation unless specifically authorized to do so by the Tribal Council.
- E. No member of the Tribal Council shall assume the authority of or give direct or indirect orders to any employee of the Executive Department of the Mescalero Apache Tribe.
- F. No member of the Council shall discuss or vote on any matter or issue while the Tribal Council is sitting as the Appellate Court when he has prejudiced himself or has a personal interest therein arising out of family, kinship or marriage ties or by having any other direct interest or any substantial indirect interest therein.

SECTION 3. SUB-COMMITTEE RULES

24-3-1. GOVERNING RULES. The following rules shall govern the conduct and procedures of the Sub-Committees of the Mescalero Apache Tribal Council:

- A. All the meetings of the Sub-Committees shall be convened by the Chairman of the Subcommittee.
- B. A detailed record shall be made of all the meetings of the Subcommittee and the recorded Minutes shall be distributed to all the other members of the Tribal Council and Officers of the Mescalero Apache Tribe.
- C. All deliberations of the Sub-Committees shall be bound and governed by the substance of Articles XVI and XVII of the Mescalero Apache Tribe's Revised Constitution. Meetings of the Subcommittee shall be held upon notice of the Subcommittee Chairman. A majority of the

members of the Subcommittee shall constitute a quorum.

- D. No Subcommittee or Subcommittee member shall give direct or indirect orders to any Branch, Department, or Division of the Mescalero Apache Tribe, or to any of its employees.
- E. No recommendations of any Subcommittee shall be distributed or acted upon until it has been submitted to the Tribal Council for approval or disapproval, and until it has been submitted to the Executive Branch of the Mescalero Apache Tribe for implementation, if appropriate.
- F. All meetings of the Sub-Committees shall be held at the Office of the Mescalero Apache Tribe at reasonable hours, unless notice is given to all members of the Tribal Council, at least three (3) days in advance, that such meeting will be held at another place. The reason for such change of meeting place shall be stated in the notice.

24-3-2. HEARINGS. The Council or any Subcommittee may hold hearings, for the purpose of:

- A. Information gathering for possible future legislation;
- B. Testing the effectiveness of past legislation;
- C. Other purposes relating to planning policy, and matters important to the Tribe.

SECTION 4. PURPOSE.

24-4-1. DEFINITIONS. For the purpose of this chapter:

- A. "Kinship" means the ordinary relationships of: parent, grandparent, sister, brother, half-sister, half-brother, aunt, uncle, grandchild, and cousin to the first degree.
- B. "Detailed Record" and "Recorded Minutes" includes a tape recording.

SECTION 5. EXECUTIVE ACTIVITIES

24-5-1. TRIBAL ENTERPRISE REPORTS. Commencing with the adoption of this Mescalero Apache Tribal Code of 1988, the Executive Branch of the Mescalero Apache Tribe shall each year render three (3) Quarterly Reports and one (1) Annual Report to the Tribal Council on each and every tribal enterprise owned and operated by the Mescalero Apache Tribe. The Quarterly and Annual Reports shall coincide with the fiscal year and quarters thereof of the Mescalero Apache Tribe.

24-5-2. TRIBAL BURSAR. The President will designate a member of the Executive to carry out the functions of Tribal Disbursing Officer. The Bursar shall assist the Treasurer in the receipt, care, disbursement, and accounting of all funds accepted by the Tribe. All persons having custody of funds properly held by either the Courts, the Tribal Council or the Executive Branch will be accountable to the Bursar.

24-5-3. AGENCY HEADS. The President shall create such executive positions as he deems necessary to tribal administration, subject to budgeting by the Council.

24-5-4. SERVICE ON EXECUTIVE BOARDS, COMMITTEES, AGENCIES. The Chairman or Chief Officer of any board, committee, or agency of the Executive Branch shall, unless otherwise provided by ordinance, be appointed by the President. All Executive Branch committee and board members shall be appointed by the President and serve at his pleasure during their terms of appointment. Any such member or agency head guilty of official misconduct not removed by the President after the President has been given ample notice of the charges shall be subject to removal proceedings commenced by the Council.

24-5-5. EMPLOYEES. The Executive Agency head shall employ such support personnel as are necessary to the full discharge of his duties. Funds for the salaries of such employees are subject to Council budgeting.

24-5-6. AGENCY POWERS SUBJECT TO REVIEW AND APPROVAL BY THE PRESIDENT. Executive agencies are empowered to promulgate their own rules and to direct activities properly within the sphere of their jurisdiction. The Council shall be empowered to amend, repeal, or modify any rules promulgated.

24-5-7. HEARINGS. Executive bodies shall be authorized to hold public hearings. Investigations and fact-finding inquiries may be conducted with the President's approval. Agencies may also hold hearings before adopting proposed rules.

24-5-8. REVIEW OF AGENCY ACTION. Absent language to the contrary, review of any agency action objected to shall commence in the President's office. The aggrieved party must show the action was not a reasonable assessment of the facts or that the rule promulgated bore no reasonable relationship to the objective(s) of the rule. Absent language to the contrary, only in the event administrative review has been exhausted may an aggrieved party commence an action in Tribal Court.

24-5-9. TRIBAL ACTIVITIES AS EXECUTIVE. In the absence of clear language to the contrary, tribal activities referred to in or contemplated by the Code will presumably be executive in nature.

24-5-10. ONE OR MORE POSITIONS. Nothing in this Code shall bar a member of the Executive from performing separate, distinct executive functions.

24-5-11. COUNCIL PARTICIPATION. A member of the Tribal Council may serve on executive boards or committees, but shall not be appointed to the head of any executive agency. Similarly, a Council member may not be appointed to chair any executive committee or board.

24-5-12. COUNCIL'S AUTHORITY. Nothing in this Section shall be construed as a derogation of the Council's authority to create standards and otherwise lawfully regulate tribal affairs. An Ordinance, to the extent its operation is inconsistent with an agency regulation, will repeal the inconsistent portion of the regulation. Reference to this repealing effect need not be made in the Ordinance.

24-5-13. LAW ENFORCEMENT. All law enforcement activities, unless otherwise provided, are under the aegis of the Executive Department. All Law Enforcement Officers must receive a Tribal Commission from the Tribal President prior to enforcing Tribal Law.

24-5-14. RELATIONS WITH FEDERAL, STATE, LOCAL GOVERNMENTS, AND OTHER OUTSIDE ENTITIES. The President shall be authorized to represent the Tribe in its dealings with the outside world. Before committing the Tribe to specific acts, he shall present the proposed action to the Council, which shall adopt, amend or reject the proposed action. The Council may further authorize by resolution the President to use his own judgment in the event the Council deems autonomous presidential action necessary, or direct specific action by the President when deemed appropriate by the Council.

24-5-15. EXECUTIVE ORDERS. The President may issue executive orders, mandating agency action in those areas of jurisdiction commended to the individual agencies by the Tribal Council.

24-5-16. TRIBAL COMMISSIONS. The Tribal President may, in his discretion, issue to all persons who are Law Enforcement Officers employed by the , and are assigned to the Mescalero Reservation, a Tribal Commission as a Law Enforcement Officer. Such Tribal Commission will constitute authority of the Law Enforcement Officer to enforce tribal law.

A Tribal Commission may also be issued by the Tribal President to:

- A. Conservation Officers employed by the Tribe; and
- B. Such other employees of the Tribe who are charged with a duty to enforce all, or any part of the Tribal Code.

24-5-17. REVOCATION OF TRIBAL COMMISSIONS. The Tribal President may revoke any commission he, or his predecessor may have issued, for cause deemed adequate by the Tribal President.

24-5-18. USE OF TRIBAL COMMISSIONS. The issuance of a Tribal Commission by the Tribal President to a B.I.A. Law Enforcement Officer is to be used by that officer only in the regular discharge of the duties of his office as a Law Enforcement Officer employed by the B.I.A. The Tribe will not be held liable for any acts of the Law Enforcement Officer unless such acts are performed by the Law Enforcement Officer at a time when he is under the direction of the President or Vice President of the Tribe.

SECTION 6. SPECIFIC DEALINGS WITH OUTSIDE ENTITIES.

24-6-1. CONSTRUCTION OF SERVICE LINES ACROSS TRIBAL LANDS. The Mescalero Apache Tribal Council hereby authorizes the President of the Mescalero Apache Tribe to execute on behalf of the Mescalero Apache Tribe (the Tribe being the legally authorized occupant and user of the Tribal lands) an Agreement to permit an appropriate applicant to construct service lines across the lands of the Mescalero Apache Tribe. Such Agreements will not require subsequent approval of the Tribal Council, unless specifically directed by the President of the Tribe, at the time of the execution of said Agreement.

SECTION 7. USE OF TRIBAL AIRCRAFT.

24-7-1. BUSINESS USE OF AIRCRAFT. The Tribal Plane shall be used by the President, Vice-President, Tribal Council or other designated Tribal representatives only for legitimate governmental and Tribal business reasons, except as provided below, as determined by the Tribal President.

24-7-2. REQUEST FOR USE OF TRIBAL PLANE. All requests to use the Tribal Plane and the President's determination as to such requests shall be in writing. The Tribal President shall keep copies of each request and his or her determination. The responsibility of maintaining all other appropriate logs and necessary records shall remain with the Tribal Plane flight crew.

24-7-3. AIR TRAVEL BY SPOUSE OR DEPENDENTS. Where travel on the Tribal Plane has been authorized and there are vacant seats on the Tribal Plane, then the spouse and/or dependent(s) of the President, Vice-President or any Tribal Council member may travel at no cost provided that:

- A. Additional flights to accommodate the attendance of a spouse or dependent shall not be required or allowed; and
- B. Where there are more requests than vacancies, the earlier request(s) received by the President shall be granted first.

24-7-4. TRANSPORTATION OF INDIVIDUAL TRIBAL MEMBERS. The Tribal Plane may be used from time to time to transport an individual Tribal member in the case of an emergency medical or other serious situation, as determined by the Tribal President, provided that:

- A. Such Tribal member may request that up to three (3) family members also travel on the Tribal Plane for the purpose of tending to such Tribal member's needs; and
- B. Where such Tribal member is a minor child, he or she shall be accompanied by at least one parent, guardian or other relative who is authorized in writing by the minor child's parent or guardian to accompany the minor child.

SECTION 8. REMOVAL FROM OFFICE; DEFINITION OF "MAJORITY VOTE."

24-8-1. "MAJORITY VOTE" DEFINED. The language "may be removed from office by majority vote of the tribal council" found in Article X, Section 1, of the Revised Constitution shall hereby be defined in future hearings conducted pursuant to this Article as "a majority vote of the whole tribal council" requiring six affirmative votes for removal, the number necessary to sustain a veto pursuant to Article XII, Section 1, of the Constitution.

SECTION 9. PRESIDENT, VICE PRESIDENT NOT TO RECEIVE STIPEND.

24-9-1. NO MEETING STIPEND FOR PRESIDENT, VICE PRESIDENT. The President and Vice-President shall not be compensated, by way of stipend, per diem or honoraria, for attendance of Tribal Council meetings, Sub-Committee meetings or meetings of any other boards or commissions.

24-9-2. REIMBURSEMENT FOR TRAVEL EXPENSES. The President and Vice-President shall be paid or reimbursed for reasonable expenses, such as meals, lodging and mileage, incurred as a result of legitimate Tribal business travel, provided that such payment or reimbursement is in accordance with the then prevailing policy for such payments and reimbursement.

SECTION 10. INDEMNIFICATION OF TRIBAL OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS.

24-10-1. DEFINITIONS. As used in this section:

- A. "Tribal official" means any person who is or was an elected tribal official of the Mescalero Apache Tribe and any person who, while a tribal official of the Mescalero Apache Tribe, is or was serving at the request of the Mescalero Apache Tribe as a director, officer, partner, trustee, employee or agent of a foreign or domestic corporation or non-profit corporation, cooperative, partnership, joint venture, trust, enterprise, or employee benefit plan or trust;
- B. "Expenses" include attorneys' fees;
- C. "Official capacity" means:
 - 1. When used with respect to a tribal official, the office of his election in the Mescalero Apache Tribe; and
 - 2. When used with respect to a person as contemplated in § 24-10-9, the elective or appointive office in the Mescalero Apache Tribe held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the Mescalero Apache Tribe, but in each case does not include service for any foreign or domestic corporation or non-profit corporation, or any cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise, or employee benefit plan or trust, which is not wholly or partially owned by the Mescalero Apache Tribe;
- D. "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding; and
- E. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative.

24-10-2. POWER TO INDEMNIFY. The Mescalero Apache Tribe shall have power to indemnify any person made a party to any proceeding by reason of the fact that the person is or was a tribal official if:

- A. The person acted in good faith;
- B. The person reasonably believed:
 - 1. In the case of conduct in the person's official capacity with the Mescalero Apache Tribe that the person's conduct was in the Tribe's best interests; and
 - 2. In all other cases, that the person's conduct was at least not opposed to the Tribe's best interests; and
- C. In the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was prohibited by the Mescalero Apache Tribal Code. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses, actually incurred by the person in connection with the proceeding; except that if the proceeding was by or in the right of the Mescalero Apache Tribe, indemnification may be made only against such reasonable

expenses and shall not be made in respect of any proceeding in which the person shall have been adjudged to be liable to the Mescalero Apache Tribe. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

24-10-3. IMPROPER PERSONAL BENEFIT. A tribal official shall not be indemnified under § 24-10-2 in respect of any proceeding charging improper personal benefit to the tribal official, whether or not involving action in the elected tribal official's official capacity, in which the elected tribal official shall have been adjudged to be liable on the basis that personal benefit was improperly received by the tribal official.

24-10-4. PROCEDURE FOR INDEMNIFICATION. Unless limited by the Constitution of the Mescalero Apache Tribe or the Mescalero Tribal Code:

- A. A tribal official who, in the opinion of the Tribal Council, reasonably based on the facts, circumstances and outcome of the proceeding, has been wholly successful, on tribal members Non-Members the merits or otherwise in the defense of any proceeding referred to in § 24-10-2 shall be indemnified against reasonable expenses incurred by the tribal official in connection with the proceeding; or
- B. The Tribal Council, upon application of a tribal official and such notice as the Court shall require, shall have authority to order indemnification in the following circumstances:
 - 1. If it determines a tribal official is entitled to reimbursement under Paragraph (A) of this subsection, the Tribal Council shall order indemnification, in which case the tribal official shall also be entitled to recover the reasonable expenses of securing such reimbursement; or
 - 2. If it determines that the tribal official is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director has met the standard of conduct set forth in § 24-10-2 or has been adjudged liable in the circumstances described in § 24-10-3. The Tribal Council may order such indemnification except that indemnification with respect to any proceeding by or in the right of the Mescalero Apache Tribe or in which liability shall have been adjudged in the circumstances described in § 24-10-3 shall be limited to reasonable expenses.

24-10-5. LIMITATIONS ON INDEMNIFICATION. No indemnification under § 24-10-2 shall be made by the Mescalero Apache Tribe unless authorized in the specific case after a determination has been made that indemnification of the tribal official is permissible in the circumstances because the tribal official has met the standard of conduct set forth in § 24-10-2. Such determination shall be made:

- A. By the Tribal Council by a majority vote of a quorum consisting of Tribal Council members not at the time parties to the proceeding;
- B. If such a quorum cannot be obtained, by a majority vote of a committee of the Tribal Council duly designated to act in the matter by a majority vote of the full council, in which designation council members who are parties may participate, and consisting solely of two or more council members not at the time parties to the proceeding;
- C. By special legal counsel, selected by the Tribal Council or a committee thereof by vote as set forth in Paragraph (A) or (B) of § 24-10-5, or, if the requisite quorum of the full council cannot be obtained therefor and such committee cannot be established by a majority vote of the full council, in which selection council members who are parties may participate;
- D. By a majority vote of the enrolled adult members of the Tribe.

Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in Paragraph (C) of § 24-10-5 for the selection of such counsel.

24-10-6. PAYMENT IN ADVANCE. Reasonable expenses incurred by an elected tribal official who is a party to a proceeding may be paid or reimbursed by the Mescalero Apache Tribe in advance of the final disposition of such proceeding if:

- A. The tribal official furnishes the Mescalero Apache Tribe a written affirmation of his good faith belief that the tribal official has met the standard of conduct necessary for indemnification by the Mescalero Apache Tribe as authorized in this section;
- B. The tribal official furnishes the Mescalero Apache Tribe a written undertaking by or on behalf of the tribal official to repay such amount if it shall ultimately be determined that the tribal official has not met such standards of conduct; and
- C. A determination is made that the facts then known to those making the determination would not preclude indemnification under this section.

The undertaking required by Paragraph (B) of this Subsection shall be an unlimited general obligation of the tribal official but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this Subsection shall be made in the manner specified in § 24-10-5.

24-10-7. INDEMNIFICATION IS NOT AN EXCLUSIVE RIGHT. The indemnification authorized by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Tribal Constitution, Tribal Code, an agreement, a resolution of the Tribal Council, both as to action in an official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a tribal official, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

24-10-8. SERVICE TO TRIBAL EMPLOYEE BENEFIT PLAN. For purposes, the Mescalero Apache Tribe shall be deemed to have requested a tribal official to serve an employee benefit plan whenever the performance by the tribal official of duties to the Mescalero Apache Tribe also imposes duties on, or otherwise involves services by, the tribal official to the plan or participants or beneficiaries of the plan; excise taxes assessed on a tribal official with respect to an employee benefit plan pursuant to applicable law shall be deemed "fines"; and action taken or omitted by the tribal official with respect to an employee benefit plan in the performance of duties for a purpose reasonably believed by the tribal official to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Mescalero Apache Tribe.

24-10-9. OFFICERS, EMPLOYEES, AND AGENTS. Unless limited by the Constitution of the Mescalero Apache Tribe or Mescalero Apache Tribal Code:

- A. An officer, employee, or agent of the Mescalero Apache Tribe shall be indemnified as and to the same extent provided in § 24-10-4 for a tribal official and shall be entitled to the same extent as a tribal official to seek indemnification pursuant to the provisions of that subsection;
- B. The Mescalero Apache Tribe shall have the power to indemnify and to advance reasonable expenses to an officer, employee or agent of the Mescalero Apache Tribe to the same extent that it may indemnify and advance reasonable expenses to tribal officials pursuant to this section; and
- C. The Mescalero Apache Tribe, in addition, shall have the power to indemnify and to advance reasonable expenses to an officer, employee or agent who is not a tribal official to such further extent, consistent with law, as may be provided by its Tribal Constitution, Tribal Code, general or

specific action of its Tribal Council, or contract.

24-10-10. INSURANCE. The Mescalero Apache Tribe shall have power to purchase and maintain insurance or furnish similar protection, including but not limited to providing a trust fund, a letter of credit or self-insurance on behalf of any person who is or was a tribal official, officer, employee or agent of the Mescalero Apache Tribe or who, while a tribal official, officer, employee or agent of the Mescalero Apache Tribe, is or was serving at the request of the Mescalero Apache Tribe as a tribal official, officer, partner, trustee, employee or agent of a foreign or domestic corporation or non-profit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust, against any liability asserted against and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Mescalero Apache Tribe would have the power to indemnify the person against such liability under the provisions of this section.

SECTION 11. RIGHTS OF INDIANS.

24-11-1. DEFINITIONS. For the purpose of this chapter, the term:

- A. "Indian Tribe" means any tribe, band or other groups of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- B. "Powers of self-government" means and includes as governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals be and through which they are executed, including courts of Indian Offenses; and
- C. "Indian courts" means an Indian tribal court or court of Indian Offenses.

24-11-2. CONSTITUTIONAL RIGHTS. No Indian tribe in exercising powers of self-government shall:

- A. Make or enforce and law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble and to petition for a redress of grievances,
- B. Violate the right of the people to be secure in their person, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- C. Subject any person for the same offense to be twice put in jeopardy;
- D. Compel any person in any criminal case to be a witness against himself,
- E. Take any private property for public use without just compensation;
- F. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- G. Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose or conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000.00, or both;
- H. Deny any person within its jurisdiction the equal protection of its laws or deprive any person the liberty without due process of law,
- I. Pass any bill of attainder or ex post facto law, or
- J. Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

24-11-3. HABEAS CORPUS. The privilege of the Writ of Habeas Corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

SECTION 12. GENERAL EMPLOYMENT APPEALS BOARD

24-12-1. ESTABLISHMENT. There is hereby established the Mescalero Apache General Appeals Board (the “Employment Appeals Board”).

24-12-2. PURPOSE. The Employment Appeals Board is established to ensure that there is an efficient and fair process for appeals by employees of the Mescalero Apache Tribe (“Tribe”) and its enterprises.

24-12-3. AUTHORITY & SCOPE.

- A. The Employment Appeals Board shall have the exclusive authority to hear appeals by employees of the Tribe and its enterprises.
- B. All appeals specifically permitted under the applicable personnel policies and procedures, and no other appeals, shall be appealed to the Employment Appeals Board. Generally:
 - 1. Employees may appeal adverse employment decisions such as suspensions and/or terminations provided that the employee has completed any required probationary period;
 - 2. Employees are not allowed to appeal terminations resulting from “reductions in force” or voluntary resignations; and
 - 3. Employees are not allowed to grieve the failure to follow administrative procedures unless the same is related to an adverse employment decision; and
 - 4. Only employees who are members of the Tribe or Tribal affiliates, as those terms are defined by the respective policy and procedure, have the right to appeal to the Appeals Board. All other appeals are considered final at the Tribe or enterprise level.

24-12-4. DEFINITION OF TRIBAL HUMAN RESOURCES DIRECTOR. “Tribal Human Resources Director” means that person who is employed by the Mescalero Apache Tribe to oversee the Tribe’s Human Resources Department.

24-12-5. FILING AN APPEAL, HEARING NOTICES, & ADMINISTRATIVE DUTIES OF TRIBAL HUMAN RESOURCES DIRECTOR.

- A. Appeals to the Employment Appeals Board may be filed in writing with the Tribal Human Resources Director. The Tribal Human Resources Director shall note the date and time that he or she received the appeal and immediately make and distribute copies of the same to members of the Employment Appeals Board.
- B. The Tribal Human Resources Director shall be responsible for distributing hearing notices prepared by and written decisions of the Employment Appeals Board to the parties involved in each appeal.
- C. The Tribal Human Resources Director shall also serve as a point of contact for the Employment Appeals Board and as a liaison between the Employment Appeals Board and other parties.

24-12-6. DECISIONS OF THE EMPLOYMENT APPEALS BOARD.

- A. In each appeal, the Employment Appeals Board may:
 - 1. Uphold a decision by a previous decision maker in the appeals process;
 - 2. Reverse a decision by a previous decision maker in the appeals process; or
 - 3. Order back pay where the Employment Appeals Board reverses a decision to terminate an employee.

- B. The Employment Appeals Board shall apply the applicable personnel policies and procedures of the employee's employer (the Tribe or the tribal enterprise) when making a decision.
- C. The Employment Appeals Board shall issue a written decision within five (5) days of hearing each appeal.
- D. Decisions of the Employment Appeals Board are final. No appeals shall be allowed to the Tribal President or to the Mescalero Apache Tribal Council (the "Tribal Council").

24-12-7. COMPOSITION OF THE EMPLOYMENT APPEALS BOARD.

- A. The Employment Appeals Board shall consist of a pool of ten (10) members selected by the Tribal Human Resources Director.
- B. Each Employment Appeals Board member must:
 - 1. Be a past or current employee of the Mescalero Apache Tribe or an enterprise of the Tribe; and
 - 2. Not have been terminated for cause from employment with the Tribe or an enterprise of the Tribe at any time.
- C. The pool may consist of up to three (3) Tribal affiliates or non-Tribal members.
- D. Sitting Tribal Council members cannot serve on the Employment Appeals Board.
- E. The Tribal Human Resources Director shall select randomly five (5) members from the pool to hear each individual appeal.

24-12-8. TERMS OF EMPLOYMENT APPEALS BOARD MEMBERS.

- A. Employment Appeals Board member terms shall be three (3) years in length and staggered.
- B. In order to ensure the terms are staggered, the initial five members shall draw lots for three (3) three-year terms and two (2) two-year term at their first regular meeting. After these initial terms expire, all future selections shall be for three-year terms.

24-12-9. CONFLICTS OF INTEREST & RECUSAL.

- A. An Employment Appeals Board member shall recuse him- or herself when he or she determines that an existing or prospective business or financial relationship must reasonably influence him or her decision.
- B. Furthermore, an Employment Appeals Board member must recuse him- or herself from any appeal by an employee who is a family or household member to that Employment Appeals Board member.
 - 1. A family member is a spouse, child (natural, adopted, foster or stepchild), parent or parent-in-law, grandparent, sibling or sibling-in-law, aunt, uncle, niece, nephew, stepparent, stepsibling, or half-sibling.
 - 2. A household member is any individual that is not a blood relation but who resides in the same home as the respective Employment Appeals Board member.
- C. Where an Employment Appeals Board member recuses him- or herself from an appeal due to a conflict of interest, then the Tribal Human Resources Director shall appoint another member from the pool to replace that member.

24-12-10. INDEPENDENCE OF THE EMPLOYMENT APPEALS BOARD.

- A. Employment Appeals Board members will not discuss appeals pending before the Employment Appeals Board outside of a hearing with any other parties, including the employee appealing the

matter, Tribal Administration, the Tribal Council, or any other outside person(s).

- B. If evidence is presented that an Employment Appeals Board member has violated this provision, then that Employment Appeals Board member will not be allowed to participate in the respective appeal and may be subject to removal from the Employment Appeals Board.

24-12-11. REMOVAL & REPLACEMENT OF EMPLOYMENT APPEALS BOARD MEMBERS.

Employment Appeals Board members may be removed and replaced by other eligible persons where the Mescalero Apache Tribal Council, upon recommendation of the President and majority vote, determines such action is in the best interests of the Tribe, including but not limited to failure to perform duties assigned under this Chapter, dishonesty, fraud, and termination of employment with the Tribe.

24-12-12. COMPENSATION. Employment Appeals Board members who are:

- A. Not employees of the Tribe or a tribal enterprise shall be paid a stipend for each meeting of the Employment Appeals Board in an amount established annually by the Mescalero Apache Tribal Council; and
- B. Employees of the Tribe or a tribal enterprise shall receive paid administrative leave to attend Employment Appeals Board hearings and shall not receive any other or further compensation.

24-12-13. HEARINGS.

- A. Hearings of the Employment Appeals Board shall occur between 9:00 A.M and 4:30 P.M. on week days and take place at the Tribal Administrative Offices.
- B. Where possible, the Employment Appeals Board shall conduct each appeal within the timeframes established by the respective policies and procedures of the employer (the Tribe or tribal enterprise). In all other cases, the Appeals Board shall hear each appeal no later than ten (10) business days of the submission of the appeal.
- C. The Tribal Human Resources Director shall keep order at such hearings but shall not have the right to vote.
- D. Each employee has the right to select an individual of his or her choosing to advocate on his or her behalf before the Employment Appeals Board.

24-12-14. QUORUM. Three (3) Employment Appeals Board members must be present to constitute a quorum at any hearing. Six (6) Employment Appeals Board members must be present to constitute a quorum at any meetings of the Board.

24-12-15. POLICIES & PROCEDURES. The Tribal Human Resources Director may develop policies and procedures governing the operation of the Employment Appeals Board, including hearing procedures, provided that the same are consistent with this Section and approved by the Mescalero Apache Tribal Council.

24-12-16. ANNUAL TRAINING. Each Employment Appeals Board member shall complete training as to the personnel policies of the Tribe and each Tribal enterprise on an annual basis.

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CHAPTER 25

PERSONS HAVING BEHAVIORAL OR EMOTIONAL ADJUSTMENT PROBLEMS

SECTION 1. MENTAL HEALTH CODE.

25-1-1. DEFINITIONS. As used in the Mental Health Code:

- A. "Aversive stimuli" means anything which, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior; but does not include verbal therapies or psychotropic medications which are not used for purposes of punishment.
- B. "Client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services, who is present in a mental health or developmental disabilities facility for the purpose of receiving such services, or who has been placed in a mental health or developmental disabilities facility by his parent or guardian or by a Court Order.
- C. "Code" means the Mental Health Code.
- D. "Consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the client separately and in combination:
 - 1. Are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for such client;
 - 2. Involve no restrictions on physical movement nor requirement for residential care except as reasonably necessary for the administration of treatment or for the protection of such client or others from physical injury.
- E. "Convulsive Treatment" means any form of mental health treatment which depends upon creation of a convulsion by any means, including but not limited to electroconvulsive treatment and insulin coma treatment.
- F. "Court" means the Tribal Court of the Mescalero Apache Tribe.
- G. "Evaluation Facility" means a community mental health center, a medical facility having psychiatric services available, local tribal I.H.S. Hospital or any other facility licensed for practice of psychiatry.
- H. "Experimental Treatment" means any mental health or developmental disabilities treatment which presents significant risk of physical harm but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies.
- I. "Habilitation" means the process by which professional persons and their staff assist the developmentally disabled client in acquiring and maintaining those skills and behaviors which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and treatment.
- J. "Likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or cause serious bodily harm upon himself by violent or other self-destructive means as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm upon himself.
- K. "Likelihood of serious harm to others" means that it is more likely than not that in the near future

the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from said person.

- L. "Mental disorder" means the substantial disorder of the person's emotional processes, thought or cognition which grossly impairs judgment, behavior or capacity to recognize reality.
- M. "Mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with individuals with mental disorders or developmental disabilities.
- N. "Psychosurgery" is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of the following:
 - 1. Modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain.
 - 2. Treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior.
 - 3. Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thought, feelings, actions or behavior.
- O. "Residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, or supervisory residence or nursing home, when the individual resides on the premises. Such treatment shall be given at the appropriate Indian Health Service facility designated by the B.I.A. or a suitable substitute designated by the B.I.A.
- P. "Treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client.

25-1-2. LEGAL REPRESENTATION OF CLIENTS. All clients may, at their own expense, be represented by counsel at all proceedings under the Mental Health Code, and shall be entitled to obtain advice of counsel at their own expense, at any time, regarding their status under the Mental Health Code.

25-1-3. COMPETENCE. Neither the fact that a person has been accepted at or admitted to a hospital or institutional facility, nor the receiving of mental health or developmental disability treatment services, shall constitute a sufficient basis for a finding of incompetence or the denial of any right or benefit of whatever nature which he would have otherwise.

25-1-4. RESIDENTIAL MENTAL HEALTH TREATMENT OF ADULTS, INVOLUNTARY; EMERGENCY.

- A. A peace officer may detain a person for emergency mental health evaluation and care in the absence of a legally valid Order from a Tribal Judge if:
 - 1. The person is otherwise subject to lawful arrest; or
 - 2. The peace officer has reasonable grounds to believe the person has just attempted suicide; or
 - 3. The peace officer, based upon his own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others, and that immediate detention is necessary to prevent such harm.

- B. A person may be detained on an emergency basis when a licensed physician certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others, and that immediate detention is necessary to prevent such harm. In addition, a licensed physician or qualified mental health professional may request from the Tribal Court an Order to transport any such person believed to be dangerous to himself or others to an evaluation facility.
- C. Any person detained under this Section shall, whenever possible, be taken immediately to an evaluation facility. Correctional facilities shall be used as temporary shelter for such persons only in cases of need, and no person taken into custody under the provisions of the Code shall remain in a detention facility longer than is necessary. If use of a detention facility is necessary, the proposed client:
 - 1. Shall not be held in a cell with prisoners;
 - 2. Shall not be identified on records used to record custody of prisoners;
 - 3. Shall be provided adequate protection from possible suicide attempts; and
 - 4. Shall be treated with the respect and dignity due every citizen who is neither accused nor convicted of a crime.
- D. Upon detention, the proposed client shall be informed orally and in writing of the purpose and possible consequences of the proceedings, the allegations in the Petition, his right to a hearing within seven (7) days, his right to counsel at his own expense, and his right to communicate with an independent mental health professional of his own choosing at his own expense and shall have the right to receive necessary and appropriate treatment.
- E. Any person committed on an emergency basis shall be released at the end of seventy-two (72) hours, unless, prior to that a Petition for Involuntary Commitment is filed with the Tribal Court. The Petition shall include a description of the specific behaviors or symptoms of the client which evidence a likelihood of serious harm to the client or others, and shall also include an initial screening report by the evaluating physician individually, or with the assistance of a mental health professional, or if a physician is not available, by a mental health professional acceptable to the Court. The Petition shall also list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the Petition shall be served on the client, as soon as possible, (and the client's attorney if he has one).
- F. A probable cause hearing shall be held within five (5) days of admission. The purpose of the hearing will be to determine if probable cause exists to believe the client has a mental disorder and as a result presents a likelihood of danger to himself or others.
- G. If probable cause is found, the client may be detained until a hearing on the merits may be held. A hearing on the merits shall be held no later than ten (10) days after the probable cause hearing. If any new witnesses or allegations are added they shall be supplied to the client (and counsel if any) at least five (5) days before the hearing.

25-1-5. COMMITMENT OF ADULTS FOR THIRTY (30) DAYS.

- A. Every adult client involuntarily admitted to a residential facility on an emergency basis shall have the right to a hearing within seven (7) days of admission unless waived. If the Social Services Agency of the B.I.A., physician or evaluation facility decides to seek commitment of the client for evaluation and treatment, a Petition shall be filed with the Tribal Court within five (5) days of admission requesting such commitment.
- B. At the hearing, the client may be represented by counsel at his own expense and shall have the right to present evidence on his behalf, including testimony by an independent mental health professional of his own choosing (at his own expense) to cross-examine witness, and to be

present at the hearing. The presence of the client may be waived upon a showing to the Court that the client knowingly and voluntarily waives his right to be present. A complete record of all proceedings shall be made.

- C. Upon completion of the hearing, the Court may order a commitment to the custody and care of the Public Health Service for evaluation and treatment in a suitable institution not to exceed thirty (30) days if the Court finds, by clear and convincing evidence, that:
 - 1. As a result of a mental disorder, the client presents a likelihood of danger to himself or others;
 - 2. The proposed commitment is consistent with the least drastic means principle.
- D. If the Court finds that the client meets the criteria for commitment set forth in Subsection C of this Section, but does not require residential care, it may order the client to undergo such non-residential treatment.
- E. Any interested person who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to himself or others, but does not require emergency care, may request the B.I.A. Social Services to investigate and determine whether reasonable grounds exist to commit such adult for a thirty (30) day period of evaluation and treatment. The applicant may present to Social Services any medical reports or other evidence immediately available to him, but shall not be required to obtain a medical report or other particular evidence in order to make such petition. The Social Services shall act on the Petition within seventy-two (72) hours. If the Social Services determines that reasonable grounds exist to commit the adult, he may petition the Court for a hearing. The Court may issue a Summons to the proposed client to appear at the time designated for a hearing which shall be not less than five (5) days from the date the Petition is served. If the proposed client is summoned and fails to appear at the proposed time and upon a finding of the Court that the proposed client has failed to appear, or who appears without having been evaluated, the Court may order the proposed client to be detained for evaluation as provided for in Subsection C of the emergency treatment section.
- F. Any hearing provided for pursuant to Subsection E of this Section shall be conducted in conformance with the requirements of Subsection B of this Section.

25-1-6. EXTENDED COMMITMENT OF ADULTS.

- A. In the case of persons committed pursuant to § 25-1-5 the Department, physician or evaluation facility may file a Petition for Extended Commitment within twenty-one (21) days after the beginning of the thirty (30) day commitment. The Petition must explain the necessity for extended commitment, specify the treatment which has been provided during the evaluation, and must include an individual treatment plan for the proposed commitment period. The Petition shall also list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the Petition shall be served on the client and the client's attorney.
- B. In the case of person not committed pursuant to § 25-1-5, a Petition for Extended Involuntary Commitment may be filed by any interested person. All Petitions pursuant to whatever Section shall be substantially in the following form:

MESCALERO APACHE TRIBAL COURT

IN THE MATTER OF _____

AN ALLEGED MENTALLY ILL PERSON

Cause No. _____

APPLICATION FOR INVOLUNTARY HOSPITALIZATION

COMES NOW the undersigned applicant, and does hereby make application for the involuntary hospitalization of the above-named mentally ill person, and as grounds therefore would show the Court that:

1. The applicant is the _____.
2. In the opinion of the applicant, the above-named person is mentally ill, and is likely to injure h__self or others if _he does not receive immediate care and treatment, and that h__ behavior has been of a nature so erratic that this applicant feels that it would be in the best interests of the said alleged mentally ill person to be committed to an institution for care and treatment.
3. A hearing be held as soon as possible for determining the mental competency of the said alleged mentally ill person, in order that _he receive immediate medical attention, and that the proper facilities or such care are not available within this county.
4. The proposed patient will ____ submit voluntarily to examination by a licensed physician to practice in this state.

Dated this ___ day of _____, 20__.

Applicant

SUBSCRIBED AND SWORN to before me the undersigned authority on this the ___ day of _____, 20__.

My Commission Expires: _____

Notary Public

- C. The client shall have the same rights at the hearing as in § 25-1-5-B. If, at the conclusion of the hearing, the fact finder determines by clear and convincing evidence that the client presents a likelihood of harm to the client or others, and that the proposed extended commitment is consistent with the least drastic means principle, the Court shall order commitment of the client for a period not to exceed one (1) year. At the expiration of the Commitment Order, the client may be detained only after a new commitment hearing, unless waived, and entry of a new Order of Commitment not to exceed one (1) year. The same procedure will be followed in succeeding years.
- D. Any client involuntarily referred for treatment pursuant to this Section shall be entitled to a re-examination of the Order for his involuntary referral for treatment on the client's own Petition, or that of the client's legal guardian, parent, spouse, relative or friend. Upon receipt of the Petition, the Court shall conduct a proceeding in accordance with this Section, except that such proceeding shall not be required to be conducted if the Petition is filed sooner than sixty (60) days after the issuance of the Order for Involuntary Referral for Treatment or sooner than sixty (60) days after the filing of a previous Petition under this Subsection.
- E. Nothing in this Section shall limit the right of a client to petition the Court for a Writ of Habeas Corpus.
- F. Nothing in this Code shall prohibit a client from seeking voluntary admission under this chapter.

25-1-7. VOLUNTARY ADMISSION TO RESIDENTIAL TREATMENT OR HABILITATION.

- A. Any person sixteen (16) years of age or older may voluntarily present himself or herself for admission for residential treatment or habilitation.
- B. Nothing in this Section shall be construed as depriving voluntary clients of any right given to involuntary clients.
- C. Any client voluntarily admitted to residential treatment or habilitation shall have the right to immediate discharge from the residential facility upon request, unless the Director of the facility or a physician determines that the client requires continued confinement and meets the criteria for involuntary residential treatment or habilitation under the Code. If the Director or physician so determines her or she shall, on the first business day following the client's request for release, request the District Attorney to initiate commitment proceedings under the Code. The client has a right to a hearing on his confinement within five (5) days of his or her request for release.

25-1-8. CONSENT TO TREATMENT, ADULT CLIENTS.

- A. No psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of expressing a decision regarding its acceptance or refusal, his or her consent must be obtained before the treatment can be performed.
- B. If the mental health or developmental disabilities professional or physician who is proposing this course of treatment or any other interested person believes that the client is incapable of informed consent, he or she shall petition the Court for the appointment of a Treatment Guardian to make a substitute decision for the client. This Petition shall be served on the patient and his attorney if he has one and next of kin. A hearing on the Petition must be held within three (3) Court days. At the hearing, the client shall have the right to counsel and an independent mental health professional at his own expense, and shall have the right to be present, to present witnesses and cross-examine opposing witnesses. If, after the hearing, the Court finds that he is not capable of making his own treatment decisions, the Court may order the appointment of a Treatment Guardian. The Treatment Guardian shall make a decision on behalf of the client whether or not to accept treatment depending on whether or not the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the Treatment Guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall also give consideration to any previous decisions made by this client in similar circumstances when the client was competent to make treatment decisions. The Treatment Guardian shall also consult with the physician or other professional who is proposing treatment, the client's attorney if he has one and interested friends or relatives of the client as he deems appropriate in making his decision. If the client, physician or other professional wishes to appeal the decision of the Treatment Guardian, he may do so, filing an appeal with the Court within three (3) calendar days of receiving notice of the Treatment Guardian's decision. In such a decision, the client shall be represented by counsel. The Court may overrule the Treatment Guardian's decision if it finds that decision to be against the best interests of the client.
- C. An evaluation facility may accept on an emergency basis any person when a licensed physician certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others, and that immediate detention is necessary to prevent such harm.
- D. Any person detained under this Section shall, whenever possible be taken immediately to an evaluation facility. Correctional facilities shall be used as temporary shelter for such persons only in cases of emergency, and no person taken into custody under the provisions of the Code shall

remain in a correctional facility longer than necessary. If use of a correctional facility is necessary, the proposed client:

1. Shall not be held in a cell with prisoners;
 2. Shall not be identified on records used to record custody of prisoners;
 3. Shall be provided adequate protection from possible suicide attempts; and
 4. Shall be treated with the respect and dignity due every citizen who is neither accused nor convicted of a crime.
- E. Immediately upon arrival at the evaluation facility, the Reservation Law Enforcement Officer shall be interviewed by the admitting physician or his designee. The admitting physician shall evaluate whether reasonable grounds exist to detain the proposed client for evaluation and treatment, and if such reasonable grounds are found, the proposed client shall be informed of his rights according to the provisions of Subsection A of this Section. If the admitting physician determines that reasonable grounds do not exist to detain the client for evaluation and treatment, the client shall not be admitted.

25-1-9. RESIDENTIAL TREATMENT AND HABILITATION OF MINORS.

- A. Before proceeding in the regular Tribal Court, the petitioning party shall first seek a determination by the Juvenile Court Judge that jurisdiction properly does or does not lie in his Court. Pursuant to this determination, the Juvenile Court Judge may hold whatever hearings are necessary to establish that jurisdiction does or does not exist. The provisions in §11-2-4 concerning the binding over of the juvenile to the Tribal Court do apply to the juvenile with mental, emotional, and behavioral problems, who is also over 14. If the Juvenile Court does not have jurisdiction, or if it does, but the juvenile is bound over, then the Tribal Court may proceed to determine whether treatment of the juvenile is warranted under the provisions of this Section.
- B. Except as provided in §25-11-10 of this Code, no minor may receive treatment for mental disorders or habilitation for developmental disabilities on a residential basis except under the provisions of this Section.
- C. Any person who believes that a minor is in need of residential mental health or developmental disabilities services may file a Petition for his commitment with the Court. The Petition shall include a detailed description of the symptoms or behaviors of the minor which support the alternatives to residential care which have been considered and the reasons for rejecting those alternatives.
- D. The Court shall, upon receiving the Petition, appoint a tribal member to counsel with the minor. The Court shall permit an attorney who is retained at the minor's expense to represent the minor.
- E. If, after interviewing his client, the minor's attorney determines that the minor understands his rights and desires to waive a hearing on the issue of commitment, the attorney shall submit a verified written statement to the Court explaining his understandings of the minor's intent. If the Court is satisfied that the minor has voluntarily and knowingly waived the right to a hearing, the minor may be admitted to residential treatment or habilitation. By waiving the right to pre-commitment hearing, the minor waives no other rights.
- F. Unless a valid waiver is approved in compliance with Subsection D of this Section, a commitment hearing shall be held within ten (10) days of the appointment of counsel, or within five (5) days of the emergency admission of the minor to a residential facility under Subsection L of this Section.
- G. At the commitment hearing the minor shall have the right to present evidence, including the testimony of a mental health or developmental disabilities professional of his own choosing (at

his own expense), the right to cross-examine witnesses, the right to a written transcript of the proceedings and the right to an expeditious appeal of an adverse ruling.

- H. The Court shall make an Order committing the minor to residential care only if it is shown by clear and convincing evidence that he is suffering from a mental disorder and:
 - 1. Poses a likelihood of injury to themselves or others;
 - 2. That the proposed commitment is consistent with the least drastic means principle.
- I. If the Court determines that the minor does not meet the criteria for commitment set forth in H of this Section, it may order the minor to undergo such non-residential treatment as may be appropriate and necessary, or it may order no treatment. If the Court determines that the minor should not be committed to residential care, and if the minor's family refuses to take the minor back into the home, the Court may order an alternative living arrangement for the minor and grant custody of the minor to another person. In such cases, the Court shall retain jurisdiction until such time as the minor is placed back in his family's home, attains the age of eighteen (18) or arrangement for permanent custody is made.
- J. Every minor receiving residential treatment for a mental disorder under this Code shall have a right to periodic review of his commitment at the end of every commitment period. The commitment period shall not exceed forty-five (45) days, except that when the minor has been committed for two (2) consecutive periods of commitment, any commitment period commencing thereafter shall not exceed one hundred twenty (120) days. At the expiration of a commitment period, the minor may continue in residential care only after a new commitment hearing, unless waived under the terms of Subsection D of this Section, and entry of a new Order of Commitment for one commitment period.
- K. Nothing in this Section shall limit the right of a minor to petition the Court for a Writ of Habeas Corpus.
- L. If the person seeking the commitment of a minor to residential treatment or habilitation believes that the minor is likely to cause serious bodily harm to himself or to others during the period which would be required to hold a commitment hearing as provide in this Section, the minor may be admitted to residential care on an emergency basis. If the minor is admitted on an emergency basis, procedures shall then take place as provided elsewhere in this Section.

25-1-10. TREATMENT AND HABILITATION OF MINORS, LIABILITY.

- A. Any minor shall have the right, with or without parental consent, to consent to and receive individual psychotherapy, group psychotherapy, guidance, counseling or other forms of verbal therapy which do not include any aversive stimuli or substantial deprivations.
- B. No psychosurgery or convulsive therapy shall be performed on a minor except by Order of a Court upon finding that such treatment is necessary to prevent serious harm to the minor. Consent of a minor or his parent to such treatment without a Court Order shall be invalid and shall not be a defense against any legal action which might be brought against the provider of such treatment.
- C. Psychotropic medications and behavior modification programs involving aversive stimuli or substantial deprivations may be administered to minors under the age of fourteen (14) only with the consent of the minor's parent or guardian. If the consent of both the minor and his parent or guardian is not obtained, and the treatment provider or another interested person believes that the administration of the drug or program is necessary to protect the minor from serious harm, any interested party may petition the Court for appointment of a Treatment Guardian, as provided in §25-1-8 of this Code.
- D. If a licensed physician believes that the administration of psychotropic medication is necessary to

protect the minor from serious harm which would occur while the provisions of Subsection C of this Section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a minor on an emergency basis, the treating physician shall prepare and place in the minor's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the minor from serious harm.

- E. Liability of persons providing mental health and development disability services to minors shall be as follows:
 - 1. No mental health or developmental disability professional or treatment facility is required to detain, treat or provide services to a minor when the minor does not require such detention, treatment or services.
 - 2. No mental health or developmental disability professional or facility may be held liable solely on the basis of misrepresentations made to them by a minor seeking treatment or habilitation services or by a minor's parent, provided that the professional or the facility's staff acted in good faith.
 - 3. Nothing in this Code shall be construed to relieve any professional or facility from liability for negligence in the diagnosis and treatment or services provided to any minor.
 - 4. Nothing in this Code shall be construed to relieve any professional or facility from duties placed on them by reporting laws relating to the detection of child abuse.
- F. Except as provided in this Section and §25-1-9 of this Code, minor clients shall have the same rights as adult clients are afforded under the Code.

25-1-11. DISCLOSURE OF INFORMATION.

- A. Except as otherwise provided in this Code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize such client as the described person, or any code, number or other means which can be used to match the client with confidential information regarding him.
- B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:
 - 1. When the request is from an employee or trainee working with mentally disordered or developmentally disabled persons, to the extent their duties in employment or training require that they have access to such information; or
 - 2. When such disclosure is necessary to protect against a clear and substantial risk or imminent serious physical injury or death inflicted by the client on himself or another.
- C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:
 - 1. Is in writing and signed; and
 - 2. Contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use which may be made of the information.
- D. The client shall have a right to access to confidential information about himself, and shall have the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. Such statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure, and shall be governed by the provisions of this Section to

the extent they contain confidential information. Nothing in this Subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client shall have the right to petition the Court for an Order granting such access.

- E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent, and the client does not have a guardian or Treatment Guardian appointed by a Court, the person seeking such authorization shall petition the Court for the appointment of a Treatment Guardian to make a substitute decision for the client, except that if the client is less than fourteen (14) years of age, the client's parent or guardian shall be authorized to consent to disclosure on behalf of the client.
- F. Information concerning a client disclosed under this Section shall not be released to any other person, agency or governmental entity, nor placed in files or computerized data banks accessible to any other persons.
- G. Nothing in this Code shall limit the confidentiality rights afforded by federal statute or regulation.

25-1-12. CONVALESCENT STATUS, RE-HOSPITALIZATION.

- A. The head of a residential facility may release an improved involuntary client on convalescent status when he believes that such release is in the best interests of the client. Release on convalescent status shall include provisions for continuing responsibility to and of the hospital. Prior to the expiration of the client's commitment period, the Director of the residential facility shall re-examine the facts relating to the commitment of the client on convalescent status and, if he determines that in view of the condition of the client, commitment is no longer appropriate, he shall discharge the client.
- B. Prior to such discharge, the Director of the residential facility from which the client is given convalescent status may at any time, re-admit the client. If there is reason to believe that the client requires re-hospitalization, the Director of the residential facility may issue an Order for the immediate return of the client. Such an Order, if not voluntarily complied with, shall, upon Order by a Judge of the appropriate Court authorize any health or police officer to take the client into custody and transport him to the residential facility.

25-1-13. TRANSPORTATION. Whenever a proposed patient is to be committed to a residential mental health or developmental disability facility, or to be returned to such a facility during commitment, the Court ordering the commitment or authorizing the return of the patient may direct appropriate persons to furnish suitable transportation in order to effect such commitment or return, contacting the Department for directions as to the destination of the patient.

25-1-14. VIOLATION OF CLIENTS' RIGHTS. Any client who believes that his rights, as established by this Code or by the Constitution of the United States, have been violated shall have a right to petition the Court for redress. The client shall have the right to be represented by counsel at his own expense. The Court shall grant relief as is appropriate.

CHAPTER 26

SCHOOL BOARD

SECTION 1. COMPOSITION.

26-1-1. MEMBERSHIP. The Mescalero Apache School Board shall be composed of seven (7) members.

- A. Five (5) members of the Board shall be enrolled members of the Mescalero Apache Tribe. As of the date of this Ordinance, there are four (4) Tribal member Board members. Therefore, the fifth (5th) Tribal member shall be appointed to the Board by the President, with the approval of the Tribal Council.
- B. Two (2) members of the Board shall be tribal affiliates. "Tribal Affiliates" means Non-Tribal members that are married to members of the Mescalero Apache Tribe.

26-1-2. QUALIFICATIONS.

- A. All members of the Mescalero Apache School Board shall:
 - 1. Be over the age of twenty-five (25) years;
 - 2. Reside within the exterior boundaries of the Mescalero Apache Indian Reservation; and
 - 3. Have at least one natural or adopted child or grandchild or be the legal guardian of a child who is enrolled in the Mescalero Apache Tribal Schools as of the date of their election.
- B. None of the members of the Mescalero Apache School Board shall be employees of any school operated by the Mescalero Apache Tribe, or have a spouse, parent or child who is an employee of any school operated by the Mescalero Apache Tribe.
- C. None of the members of the Mescalero Apache School Board shall previously have been convicted of a felony. The Mescalero Apache Election Board shall ensure that background checks are performed by the School in order to determine whether a candidate for the School Board meets the qualifications contained herein.

26-1-3. TERMS OF OFFICE. Each of the members of the Mescalero Apache School Board shall serve terms of two (2) years and such terms shall be staggered. Such staggered terms shall be as follows:

- A. The two (2) Tribal member and one Tribal Affiliate positions that would have been up for election [in the summer of 2015] shall be up for the first election under this Ordinance.
- B. The Tribal member position appointed by the President with the approval of the Tribal Council, pursuant to Section 1.1(A) herein, shall be up for the first election under this Ordinance.
- C. The remaining two (2) Tribal member and one Tribal Affiliate positions shall be up for the next election.

26-1-4. SERVICE OF PLEASURE OF TRIBAL COUNCIL. The Tribal Council shall have the authority to remove any School Board Member upon a majority vote of the Tribal Council.

26-1-5. VACANCIES. A vacancy shall occur when a Board Member dies, resigns, if the Member is removed by the Tribal Council, or the Member must be permanently absent from the Board and such absence occurs prior to the expiration of his or her term. The President of the Mescalero Apache Tribe, with the concurrence of the Tribal Council, shall appoint individuals to fill the remainder of the term of the respective Board Member when a vacancy occurs.

SECTION 2. AUTHORITY.

26-2-1. AUTHORITY TO OPERATE SCHOOL. The Mescalero Apache School Board shall be responsible for the day-to-day operation of all schools, which the Mescalero Apache Tribe operates within established policies.

26-2-2. AUTHORITY TO ENTER INTO CONTRACTS. The Mescalero Apache School Board shall only have the authority to enter into contracts on behalf of the School.

26-2-3. AUTHORITY TO PROMULGATE RULES. The Mescalero Apache School Board shall have the authority to adopt and promulgate rules of procedure, bylaws and the like which shall govern the Board's conduct when these rules or bylaws are consistent herewith, and with the Mescalero Apache Tribal Constitution and the Mescalero Apache Tribal Code.

26-2-4. AUTHORITY TO HIRE AND FIRE. The Mescalero Apache School Board shall have the authority to hire and fire all employees of any school operated by the Mescalero Apache Tribe, including the Superintendent. The Mescalero Apache School Board shall not enter into any employment contract, and shall not have the power to enter into any employment contract, that exceeds one (1) year in duration. This authority may be delegated.

SECTION 3. ELECTION.

26-3-1. ELECTION. The members of the Mescalero Apache School Board shall be elected by those enrolled members of the Mescalero Apache Tribe who are registered to vote in Tribal Council elections.

26-3-2. CONDUCT OF ELECTION. The election of members of the Mescalero Apache School Board shall be conducted in every year prior to the first day of July.

- A. Election Board. The Mescalero Apache Tribal Election Board shall conduct an election for School Board members in the same manner that it conducts the primary and general elections.
- B. Election Proclamation. In April of every calendar year, the Secretary of the Mescalero Apache Tribal Council shall issue a School Board Election Proclamation. This Proclamation shall set forth the number of vacancies to be filled by election, the date and time by which candidates must file for office, and the date and time of election.
- C. Announcement of Election. The Mescalero Apache Tribal Election Board shall announce and publicize the School Board election in the same fashion that it announces and publicizes other elections.
- D. Declaration of Candidacy. Each individual shall declare his or her candidacy in conformance with the Election Proclamation.

SECTION 4. SCHOOL POLICIES.

26-4-1. AUTHORITY. The School Board shall have the authority to suggest policies, including personnel policies, for the administration of all schools operated by the Mescalero Apache Tribe.

26-4-2. APPROVAL. These policies shall be subject to the approval of the Tribal Council and shall not become effective until approved by the Tribal Council.

CHAPTER 27

SOVEREIGN IMMUNITY

27-1-1. SOVEREIGN IMMUNITY. Nothing in this Code shall be construed to constitute a waiver of the Tribe's sovereign immunity.

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CHAPTER 28

RELATIONS WITH NON-MEMBERS

SECTION 1. RULES GOVERNING SOLICITATION BY RELIGIOUS GROUPS

28-1-1. COUNCIL'S APPROVAL. Any organized religious groups or persons not already established on the Reservation as of the effective date of this Code wishing to solicit for any reason must obtain the three fourths (3/4) majority consent of the Mescalero Apache Tribal Council at one of its regular meetings.

28-1-2. PENALTIES FOR VIOLATIONS. Any person or persons violating the above provisions shall be deemed guilty of trespass and shall be dealt with according to the laws of the Mescalero Apache Tribe or other applicable U.S. federal laws.

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CHAPTER 29

GAMING

SECTION 1. NAME.

29-1-1. TITLE. The name of this Ordinance shall be the “Mescalero Apache Gaming Ordinance.”

SECTION 2. DEFINITIONS.

29-2-1. MEANINGS. The following words shall have the following meanings under this Ordinance, unless the context otherwise requires.

A. “Bingo” means:

1. The game of chance commonly known as “bingo” or lotto (whether or not electronic, computer, or other technologic aids are used in connection) when players:
 - a. Play for prizes with cards bearing numbers or other designations;
 - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
 - c. Win the game by being the first person to cover a designated pattern on such cards; and,
2. If played in the same location as bingo, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo.

B. “Class II gaming” means:

1. Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:
 - a. Play for prizes with cards bearing numbers or other designations;
 - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
 - c. Win the game by being the first person to cover a designated pattern on such cards.
2. If played in the same location as bingo or lotto, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo.
3. Non-banking card games that are:
 - a. Explicitly authorized by the laws of the State, or
 - b. Not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

C. “Class III Gaming” means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

1. Any house banking game, including but not limited to:
 - a. Card games such as Baccarat, Chemin de Fer, Blackjack (21) and Pai Gow (if played as house banking games);

- b. Casino games such as Roulette, Craps and Keno;
- 2. Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;
- 3. Lotteries, in any form.
- D. “Commission” or “Mescalero Apache Tribal Gaming Commission” means the Mescalero Apache Tribal Gaming Commission established by this Ordinance.
- E. “Gaming Enterprise” means an unincorporated, wholly owned business Enterprise of the Tribe duly authorized by Tribal Resolution of the Mescalero Apache Tribal Council to conduct Class III gaming on the Mescalero Reservation.
- F. “Games of Chance” includes Class II and Class III gaming, but does not include social games played solely for prizes of minimal value, or traditional forms of Indian gaming authorized by the Mescalero Apache Tribal Council in connection with tribal ceremonies or celebrations.
- G. “Gaming Device” or “Gaming Equipment” means any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine used remotely or directly in connection with gaming.
- H. “Gaming Employee” means a person connected directly with a Class II or Class III gaming activity as a Key or Primary employee as defined in Section 2 (P), (AA) - Definitions; “Gaming employee” does not include:
 - 1. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;
 - 2. Janitorial personnel;
 - 3. Stage, sound and light technicians; or
 - 4. Personnel engaged in any non-Class II or non-Class III gaming activity; or
 - 5. Other nongaming personnel.
- I. “Gaming Facility” means the building location or room in which Class II and/or Class III gaming is conducted on the Reservation.
- J. “Gaming Ordinance” and “Ordinance” mean this Mescalero Apache Gaming Ordinance and any amendments thereto.
- K. “Gaming Services” means the provision or sale of any gaming device, games of chance, cards, dice, coins, tokens, gaming related goods, poker tables, blackjack tables, equipment or any mechanical, electromechanical, electronic device, machine, including training and consulting services for table games, slots, cage, accounting, hard and soft count, surveillance, and management to the Tribe, Gaming Enterprise, or Management Contractor in connection with the operation of gaming in a Gaming Facility.
- L. “General Manager” means the Manager, Director or other person responsible for the gaming operations of a Gaming Enterprise as appointed by the Mescalero Apache Tribal President or his designee or, if the Gaming Enterprise enters into a Management Contract, the chief Management Contractor shall be the General Manager.
- M. “Gross Receipts” means receipts from the sale of shares, tickets, or rights in any manner connected with participation or the right to participate in any game of chance, including but not limited to, any admission fee or charge, the sale of merchandise, refreshments, souvenirs, services, equipment, or supplies, interest earned on deposits, and all other miscellaneous receipts.

- N. “IGRA” means the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§1166-1168.
- O. “Indian lands” means:
1. All lands within the limits of any Indian reservation; and
 2. Any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.
- P. “Joint Powers Agreement” means an agreement related to gaming and games of chance on the Reservation entered into with the state of New Mexico or any other New Mexico governmental entity under the New Mexico Joint Powers Agreements Act, § 11-1-7, N.M.S.A.. 1978 (1994 Repl.).
- Q. “Key Employee” means:
1. A person who performs one or more of the following functions: Bingo caller, cashier; Counting room supervisor; Count and drop personnel; Chief of Security Custodian of gaming supplies or cash; Floor manager; Pit boss; Dealer; Croupier; Player’s Club and Player Tracking Personnel; Cage and Vault Personnel; Approver of credit; Any person engaged in Purchasing, Finance, Accounting, MIS, or IS functions; or Custodian of gambling devices including persons with access to cash and accounting records within such devices; and
 2. If not otherwise included, any compensated person connected directly with a Gaming Enterprise whose total cash compensation is in excess of \$50,000 per year; or
 3. If not otherwise included, the 4 most highly compensated persons in the gaming operation.
- R. “License” means a license duly issued by the Mescalero Apache Tribal Gaming Commission to principals, primary management officials and key employees of any gaming enterprise conducted on the Reservation and to others pursuant to this Gaming Ordinance.
- S. “Licensee” means any entity or person who has been duly licensed by the Mescalero Apache Tribal Gaming Commission.
- T. “Management Contract” means a contract within the meaning of IGRA, 25 U.S.C. §§ 2710(D) (9) and 2711, as defined in 25 C.F.R. Sec. 502.15: any contract, subcontract, or collateral agreement between the Tribe (or Gaming Enterprise) and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.
- U. “Management Contractor” means any person or entity that has entered into a Management Contract with the Gaming Enterprise Board.
- V. “Member of the Tribe” or Tribal Member means an enrolled member of the Mescalero Apache Tribe.
- W. “National Indian Gaming Commission” and “NIGC” mean the National Indian Gaming Commission established by the IGRA.
- X. “Net revenues” means gross gaming revenues of an Indian gaming operation less –
1. Amounts paid out as, or paid for, prizes; and
 2. Total gaming-related operating expenses excluding management fees.

- Y. “Occasion” means a gathering at which a game of chance is played.
- Z. “Person” means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other legal entity whatsoever.
- AA. “Premises” means any room, hall, building, enclosure, or outdoor or other area used for the purpose of playing a game of chance.
- BB. “Primary Management Official” means:
1. The person having management responsibility for a management contract:
 2. Any person who has authority:
 - a. To hire and fire employees; or
 - b. To set up working policy for the gaming operation; or
 3. The chief financial officer or other person who has financial management responsibility.
- CC. “President” means the President of the Mescalero Apache Tribe
- DD. “Tribe” means the Mescalero Apache Tribe.
- EE. “Reservation” means the Mescalero Apache Indian Reservation and any lands title to which is held in trust by the United States for the benefit of the Mescalero Apache Tribe or held by the Mescalero Apache Tribe subject to a restriction by the United States against alienation, and lands the Mescalero Apache Tribe exercises governmental power.
- FF. “Site License” means a license duly issued by the Mescalero Apache Tribal Gaming Commission for each Gaming Facility at each location at which games of chance are permitted to be conducted on the Reservation.
- GG. “State Gaming Representative” means that person designated by New Mexico State law who will be responsible for actions of the state set out in the Tribal-State Compact.
- HH. “Temporary License” means a license for no longer than 90 days issued by the Mescalero Apache Tribal Gaming Commission to an applicant who has filed with the Mescalero Apache Tribal Gaming Commission a completed application, pending the results of background checks required by this ordinance. Such temporary licenses shall be issued only when needed to acquire necessary personnel for the conduct of games of chance on the Reservation and they shall not be issued if the background investigation undertaken discloses that the applicant has a criminal history or if other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and of no effect upon:
1. The issuance of a license;
 2. The issuance of a notice of denial; or
 3. 90 days after the temporary license is issued, whichever occurs earlier.
- II. “Tribal Council” means the Tribal Council of the Mescalero Apache Tribe, the legislative body of the Tribe.
- JJ. “Tribal Court” means the Mescalero Apache Tribal Court.
- KK. “Tribal-State Compact” and “Compact” mean any compact entered into by the Tribe and the State of New Mexico under Section 11(d) of the IGRA. (25 U.S.C. 2710(d)).

SECTION 3. PURPOSES.

29-3-1. PURPOSES. The purposes of this Gaming Ordinance are:

- A. To make lawful, and provide for the regulation of, all playing of games of chance on the Reservation;
- B. To protect the integrity of all such gaming; and
- C. To prevent improper or unlawful conduct in gaming.

SECTION 4. INTERPRETATION.

29-4-1. MEANING. This Gaming Ordinance is an exercise of the sovereign power of the Tribe and shall be liberally construed for the accomplishment of its purposes and to comply with the Indian Gaming Regulatory Act.

SECTION 5. GAMING POLICY.

29-5-1. GAMES OF CHANCE PROHIBITED. No person may operate or conduct any games of chance within the boundaries of the Reservation except as authorized by the Mescalero Apache Tribal Council.

29-5-2. OWNERSHIP OF GAMING ENTERPRISE. The Mescalero Apache Tribe shall have the sole proprietary interest in, and responsibility for, the operation and conduct of any games of chance operated or conducted on the Reservation.

29-5-3. PROTECTION OF ENVIRONMENT; PUBLIC HEALTH AND SAFETY. The construction and maintenance of any gaming facility, and the operation and conduct of any and all games of chance, shall be done in a manner that adequately protects the environment and the public health and safety, and must be done in a manner that meets the requirements of Section 13(C) of this ordinance.

29-5-4. AGE RESTRICTIONS. No person under 21 years of age may participate in any Class III gaming on the Reservation, and no person under 21 years of age can be employed in any Class III gaming activities as a Gaming Employee or primary management official of any gaming enterprise on the Reservation.

29-5-5. PERSONS BARRED FROM PERSONAL PARTICIPATION IN GAMING. None of the following persons serving in the following categories of employment or office may personally engage in gaming, play any games of chance, or win any prizes awarded by the Gaming Enterprise in the Tribe until 90 days after the termination of such employment or office:

- A. Employees of the Mescalero Apache Tribal Gaming Commission,
- B. General Manager of the Gaming Enterprise,
- C. Primary Management officials,
- D. Employees of the Gaming Enterprise; however, the Mescalero Apache Tribal Gaming Commission is authorized to exempt classes of employees from the prohibition of this section.

SECTION 6. CLASS II AND CLASS III GAMES AUTHORIZED.

29-6-1. CLASS II GAMES. The Gaming Enterprise shall have authority to establish, equip, operate and maintain bingo and Class II card games on premises located at such places as the Tribal Council has designated or may designate.

29-6-2. CLASS III GAMES. The Gaming Enterprise shall have authority to establish, equip, operate, and maintain a Class III gaming operation on premises located at such places on the Reservation as the Tribal Council has designated or may designate.

29-6-3. PREMISES OPEN TO MESCALERO APACHE TRIBAL GAMING COMMISSION. Premises where any Class II or Class III gaming is being operated or conducted, or where it is intended that a Class

II or Class III gaming will be operated or conducted, shall at all times be open to inspection by the Mescalero Apache Tribal Gaming Commission and its agents and employees.

29-6-4. EMPLOYEES. Gaming Employees who operate or conduct, or assist in operating or conducting, Class II or Class III gaming shall be employed by the Gaming Enterprise and shall wear a gaming license badge evidencing their names and the legend of the Gaming Commission.

29-6-5. QUALIFICATION FOR EMPLOYMENT; TESTING. Employees of the Gaming Enterprise shall be of good moral character and, as a condition of their employment, shall agree to any lawful means of testing for truthfulness, at any time without prior notice, concerning the handling, collection and/or disbursement of gross receipts. No person shall be employed by the Gaming Enterprise, whose prior activities, criminal record if any, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the operation or conduct of gaming or the carrying on of business and financial arrangements incidental thereto.

29-6-6. PREFERENCE IN EMPLOYMENT. The Gaming Enterprise shall provide preference in employment and advancement to tribal members if they meet the qualifications for such employment with the Gaming Enterprise.

29-6-7. PERSONNEL POLICIES. The Gaming Enterprise shall adopt written personnel policies that shall be provided to each employee. These Personnel Policies shall provide a formal grievance procedure, including appeal to persons of greater authority than the employee's immediate supervisor.

SECTION 7. MESCALERO APACHE TRIBAL GAMING COMMISSION.

29-7-1. ESTABLISHMENT OF MESCALERO APACHE TRIBAL GAMING COMMISSION. There is hereby established the Mescalero Apache Tribal Gaming Commission for the purposes of regulating all games of chance within the Reservation and enforcing this Gaming Ordinance.

29-7-2. POWERS AND DUTIES. The Mescalero Apache Tribal Gaming Commission shall have the following powers and duties:

- A. To recommend to the Tribal Council whether it should permit or refuse to permit the operation or conduct of any games of chance within the Reservation, and to specify the recommendations for the operation or conduct of any permitted games of chance within the Reservation.
- B. To inspect and examine all premises within the Reservation at which games of chance are played to insure that all gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety as required by Sections 5(C) and 13(C).
- C. To issue separate site licenses to each Gaming Facility or specific location on the Reservation where the Tribal Council authorizes gaming to occur.
- D. To implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors and others connected with gaming activities, including the issuance of site licenses to gaming facilities, and the issuance of temporary licenses and licenses to individuals and entities and the verification of internal controls, as required under this Ordinance, IGRA, and any procedures prescribed by the Secretary of the Interior.
- E. To conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified Gaming Enterprise Key Employees and Primary Management Officials under requirements at least as strict as those established in Section 9(E)(6) of this Ordinance; and grant, deny, condition, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, denying, conditioning,

- suspension, revocation, or renewal of licenses.
- F. To promulgate rules for any Class II or Class III gaming activity on the Reservation in a manner consistent with federal regulations enacted to implement the federal IGRA.
 - G. To serve as the Tribal Gaming Agency for purposes of implementing the Tribal-State gaming compact entered into between the Tribe and the State of New Mexico to make such reports regarding Class III gaming to the State Gaming Representative as required by the Tribal-State Compact and to inspect and make copies of New Mexico state records concerning all Class III gaming conducted under this Ordinance.
 - H. To inspect, examine, photocopy, and audit all papers, books, and records regarding gaming activities conducted within the Reservation and any other matters necessary to carry out the duties of the Tribal Gaming Commission under this Gaming Ordinance.
 - I. To investigate any suspicion of wrongdoing related to any gaming activity or find suitable the imposition of a fine upon any person or entity for any cause deemed reasonable by the Gaming Commission.
 - J. To conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law, including this Gaming Ordinance, or with any contracts or agreements related to gaming activities.
 - K. To hold such hearings, sit and act at such times and places, take testimony, and receive such evidence, as the Mescalero Apache Tribal Gaming Commission deems relevant in fulfilling its duties.
 - L. To require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation by the Mescalero Apache Tribal Gaming Commission, and to bring actions in the Tribal Court for the enforcement of such subpoenas.
 - M. To administer oaths and affirmations to witnesses appearing before the Mescalero Apache Tribal Gaming Commission.
 - N. To bring suit in the Tribal Court seeking temporary and permanent orders closing a game of chance in accordance with this Gaming Ordinance.
 - O. To enter into contracts and memoranda of understanding, as directed by Tribal Resolution of the Mescalero Apache Tribal Council, for activities necessary to the discharge of the duties of the Mescalero Apache Tribal Gaming Commission, provided that and to contract with the National Indian Gaming Commission for the enforcement of federal regulations governing gaming on Indian reservations, provided that the Mescalero Apache Tribal Gaming Commission may not employ any person who would be disqualified from being a Commissioner under one or more of the four prohibitions in Section 7(E) below.
 - P. The Mescalero Apache Tribal Gaming Commission shall submit an annual budget, with supporting documentation as directed, to the Tribal Council for its consideration and approval. The Mescalero Apache Tribal Gaming Commission shall submit quarterly financial reports to the President of the Mescalero Apache Tribe.
 - Q. To establish and collect license, investigation and regulatory fees to cover or help cover the costs connected therewith.
 - R. To certify management contracts in accordance with this Gaming Ordinance.
 - S. To hear appeals in accordance with this Gaming Ordinance.
 - T. To keep minutes, records, and books in which shall be kept a true, faithful, and correct record of

all proceedings of the Mescalero Apache Tribal Gaming Commission.

- U. To promulgate rules and regulations, in addition to those required by Section 7(B)(7) above, as it deems appropriate to implement the provisions of this Gaming Ordinance.
- V. To recommend amendments to this Gaming Ordinance to the Tribal Council.
- W. To submit an annual report to the Tribal Council and Tribal President on the activities of the Mescalero Apache Tribal Gaming Commission, such report must include information on the funding, income and expenses of the Mescalero Apache Tribal Gaming Commission.
- X. To take action as may be reasonable and appropriate to enforce this Ordinance and the rules and regulations of the Mescalero Apache Tribal Gaming Commission.

29-7-3. DUTIES NOT DELEGATED TO THE MESCALERO APACHE TRIBAL GAMING COMMISSION.

- A. The Commission shall have no involvement in the day-to-day operational decisions of the Gaming Enterprise except to the extent that such issues involve compliance with Presidential Executive Orders, Tribal Ordinances, Tribal Resolutions, the Indian Gaming Regulatory Act, National Indian Gaming Commission regulations, or other matters assigned to the Commission.
- B. The Executive Director of the Mescalero Apache Tribal Gaming Commission shall be appointed by the President of the Mescalero Apache Tribe. The Executive Director shall report directly to the President of the Mescalero Apache Tribe and shall provide a written report on a regular basis, at least monthly, as directed.
- C. The Executive Director shall (or caused to be) hire, fire, and manage all employees of the Gaming Commission under the direction of the Tribal President.

29-7-4. PROCEDURES FOR PROMULGATION OF REGULATIONS. Where the Mescalero Apache Tribal Gaming Commission is authorized to promulgate regulations, the following procedures shall be followed.

- A. First, the Mescalero Apache Tribal Gaming Commission shall hold an informal meeting with the Gaming Enterprise management to discuss the purpose of the proposed regulation and its substantive content. The Mescalero Apache Gaming Enterprise shall be given an opportunity to advise the Mescalero Apache Tribal Gaming Commission of any policy concerns.
- B. After the Gaming Enterprise has had an opportunity to advise the Mescalero Apache Tribal Gaming Commission of its concerns, the Mescalero Apache Tribal Gaming Commission shall put the proposed regulation in a form for formal circulation and comment. At a minimum, the proposed regulation shall be posted in the tribal offices, and a copy should be mailed to the Gaming Enterprise and the General Manager. The Mescalero Apache Tribal Gaming Commission shall allow a minimum of 14 and a maximum of 30 days for comment.
- C. The Mescalero Apache Tribal Gaming Commission may receive written comments from interested parties. After considering comments, the Mescalero Apache Tribal Gaming Commission shall publish the regulation in proposed final form by posting a copy of the final regulation in the tribal offices and by sending a copy of the final regulation to the Gaming Enterprise and to the General Manager.
- D. The regulation shall become final 14 days after publication by posting and circulation as specified in Section 7(D)(3) above.
- E. Copies of all regulations enacted by the Commission shall be kept in the Commission's offices. All Tribal Ordinances, Resolutions, Executive Orders and regulations involving gaming or which affect gaming shall be kept with documents in the Commission offices.

- F. Nothing in this Ordinance shall infringe upon the power of the Tribal Council, prior or subsequent to the effective date of the regulation, to modify or rescind any regulation.

29-7-5. COMPOSITION; TERMS. The Mescalero Apache Tribal Gaming Board of Commissioners shall consist of no fewer than three, and no more than five, Part-Time Commissioners appointed by the Tribal President, subject to confirmation by the Tribal Council. A Commissioner shall serve for a term of three (3) years. A Commissioner may serve after the expiration of his or her term of office until a successor has been appointed, unless such Commissioner has been removed from office pursuant to Section 8(G). Commissioners may serve for more than one term. In order to establish annually staggered terms, the first two (2) Commissioners, as designed by the Tribal President, shall serve a three (3) year term; the second two (2) Commissioners, as designed by the Tribal President, shall serve a two (2) year term and one (1) shall serve a one (1) year term for the initial appointment terms only. Thereafter, all successive terms of appointment shall run for three (3) years.

29-7-6. QUALIFICATIONS OF COMMISSIONERS. Commissioners shall be Tribal Members. No person shall be eligible or qualified to serve, or continue to serve, as a Commissioner who:

- A. Has been convicted of a felony or gaming offense;
- B. Is an employee of any gaming enterprise;
- C. Has any financial interest in, or responsibility for, any gaming activity, including any indirect interest arising from the interest of an immediate family member (husband, wife, son, daughter, brother, sister, father or mother); or,
- D. Has any financial interest in, or responsibility for, any gaming-related contract, including any indirect interest arising from the interest of an immediate family member (husband, wife, son, daughter, brother, sister, father or mother).

29-7-8. REMOVAL OF COMMISSIONERS. A Commissioner may be involuntarily removed or suspended from office by the Tribal President, subject to the approval of the Tribal Council without cause.

29-7-9. RESIGNATIONS AND VACANCIES. Any Commissioner may resign at any time by giving written notice of such resignation to the Executive Director of the Mescalero Apache Gaming Commission or giving such notice to President of the Mescalero Apache Tribe. The resignation shall become effective at the time specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Mescalero Apache Tribal Gaming Commission, howsoever caused, shall be filled for the unexpired portion of the vacated Commissioner's term by a qualified person appointed by the President with the consent of the Tribal Council.

29-7-10. SELECTION OF CHAIRMAN. The Tribal President shall select one Commissioner to serve as Chairman, one Commissioner to serve as Vice Chairman, and one Commissioner to serve as Secretary. The Vice Chairman shall serve as Chairman during meetings of the Mescalero Apache Tribal Gaming Commission at which the Chairman is absent.

29-7-11. MOTIONS AND RESOLUTIONS; MEETINGS; QUORUM. The powers of the Mescalero Apache Tribal Gaming Commission are vested in the Commissioners. All official actions of the Mescalero Apache Tribal Gaming Commission shall be taken by motion or resolution approved by the affirmative vote of a majority of the Mescalero Apache Tribal Gaming Commission members present at a meeting with a quorum. The Mescalero Apache Tribal Gaming Commission shall meet at the call of the Executive Director, the Chairman, or a majority of its members. However, the Commission shall meet at least once every month. A simple majority of the members of the Mescalero Apache Tribal Gaming Commission shall comprise a quorum.

29-7-12. NOTICE.

- A. Notice of meetings stating the time, date, and tentative agenda shall be given in writing to each Commissioner by letter mailed no fewer than five days before the meeting or personally delivered no fewer than 24 hours before the meeting, provided, however, that no written notice shall be required of regularly scheduled meetings or meetings scheduled at a previous meeting, so long as such schedule or setting is made known to all members.
- B. Notice may be waived in a writing signed by all Commissioners entitled to such notices, whether before or after the meeting begins, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any Commissioner at a Mescalero Apache Tribal Gaming Commission meeting shall constitute his or her waiver of notice, except where a Commissioner attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

29-7-13. COOPERATION WITH LAW ENFORCEMENT AGENCIES. The Mescalero Apache Tribal Gaming Commission may cooperate with law enforcement officials the B.I.A., the F.B.I., and other law enforcement agencies, when such cooperation is in the best interests of the Tribe and will help to insure the fair, honest, and efficient games of chance are operated and conducted within the Reservation.

29-7-14. COMPENSATION FOR SERVICE; REIMBURSEMENT OF EXPENSES. Commissioners shall be compensated for serving on the Mescalero Apache Tribal Gaming Commission in accordance with the budget approved by the Mescalero Apache Tribal Council. In accordance with the budget approved by the Tribal Council, Commissioners shall additionally be reimbursed for reasonable expenses incurred in connection with the performance of their Mescalero Apache Tribal Gaming Commission duties at the rate at which such expenses are customarily reimbursed.

SECTION 8. MESCALERO APACHE TRIBAL GAMING COMMISSION'S RELATIONSHIP TO TRIBAL GOVERNMENT.

29-8-1. AGENCY OF TRIBAL GOVERNMENT. The Mescalero Apache Tribal Gaming Commission shall be an agency of the Tribal Government and as such shall adopt personnel and administrative policies. The Commission is the Tribal Gaming Agency for purposes of the Tribal-State Gaming Compact between the Tribe and the State of New Mexico.

29-8-2. INDEPENDENT DECISION-MAKING AUTHORITY. Notwithstanding the fact that the Mescalero Apache Tribal Gaming Commission is an agency of the Tribal Government, the decisions of the Mescalero Apache Tribal Gaming Commission regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the Mescalero Apache Tribal Gaming Commission; provided, that any person or entity adversely affected by a ruling of the Mescalero Apache Tribal Gaming Commission, including, but not limited to the Mescalero Apache Gaming Enterprise or any employee thereof, may petition the Tribal Court for review of such decision, in accordance with Section 14(H) below.

29-8-3. GAMING RESPONSIBILITIES. The Commission will assure that the Gaming Enterprise:

- A. Operates all Class III gaming pursuant to Tribe laws and regulations, the IGRA and other applicable federal law;
- B. Provides for the physical safety of patrons in every gaming facility;
- C. Provides for the physical safety of employees of the Mescalero Apache Gaming Enterprise;
- D. Provides for the physical safeguarding of assets transported to and from the Gaming facility and the cashier's cage department;
- E. Provides for the protection of the property of patrons and the Gaming Enterprise from illegal activities;

- F. Participates in licensing of primary management officials and key employees of a Class III Gaming Enterprise;
- G. Detains persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
- H. Records and investigates any and all unusual occurrences related to Class III Gaming within the gaming facility.

SECTION 9. LICENSES FOR OPERATING AND CONDUCTING GAMES OF CHANCE.

29-9-1. LICENSES REQUIRED.

- A. Gaming Enterprise. The Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission.
- B. Gaming Facility. Each Gaming Facility shall be licensed by the Mescalero Apache Tribal Gaming Commission.
- C. Gaming Employees. All Gaming Employees shall be licensed by the Mescalero Apache Tribal Gaming commission and subject to background investigations.
- D. Management Contractors. All Management Contractors, including their principals, primary management officials, key employees and shareholders having in excess of 10% ownership or interest, shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to background investigations.
- E. Sales of Gaming Devices, Equipment or Services. Any person or entity proposing to sell or lease any Gaming Device, Gaming Equipment, or provide Gaming Services to a Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to a background investigation before being permitted to sell or lease any Gaming Device or Gaming Equipment or provide any Gaming Services to any Gaming Enterprise, Gaming Facility, or Management Contractor.

29-9-2. LICENSE APPLICATION. Each applicant for a license shall file with the Mescalero Apache Tribal Gaming Commission a written application in the form prescribed by the Mescalero Apache Tribal Gaming commission, duly executed and verified, along with the applicant's fingerprint card, current photograph and any fees required by the Mescalero Apache Tribal Gaming Commission. At a minimum, the application form shall contain all of the following information and requests for information:

- A. The following notice ("Privacy Act Notice") shall be provided to the applicant with the application form, with instructions to the applicant to read and sign the Privacy Act Notice before the application is executed and returned:

“In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by members and staff of the Mescalero Apache Tribal Gaming Commission, and of the National Indian Gaming Commission ("NIGC") who have need for the information in performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when, pursuant to a requirement by a tribe or the NIGC, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Tribe's being unable to hire you as a primary management official or in a key employee position.

The disclosure of your Social Security Number ("SSN") is voluntary. However, failure to supply a SSN may result in errors in processing your application."

- B. A notice stating that any existing persons or entities shall be notified in writing that they shall either:
1. Complete a new application that contains a new Privacy Act Notice.
 2. Sign a statement that contains the Privacy Act Notice and consent to the routine uses of information described in that Notice.
- C. The following notice ("False Statement Notice") shall be placed on the application form before that form is filled out by any applicant:
- A false statement on any part of the application by any party required to be licensed by Section 9(A) above may be grounds for not hiring you, denying you a license or for firing you after you begin work, or revoking any license previously issued. Also, you may be punished by fine or imprisonment. See 18 U.S. Code §1001.
- D. The Mescalero Apache Tribal Gaming Commission shall notify in writing any persons or entities required to be licensed that they shall either:
1. Complete a new application form that contains a False Statement Notice; or
 2. Sign a statement that contains the Notice.
- E. The Mescalero Apache Tribal Gaming Commission shall request from each person or entity required by Section 9(A) above to be licensed all of the following information:
1. Full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 2. Currently and for the previous 10 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; provided, that any applicant who is a primary management official, key employee, management contractor, manufacturer or supplier of gaming devices and/or a person providing gaming services, must provide such information from the age of 18;
 3. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Section 10(B)(5)(b) above;
 4. Current business and residence telephone numbers;
 5. A description of existing or previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between the businesses and Indian tribes;
 6. A description of any existing and previous business relationships with the gaming industry, including, but not limited to, ownership interests in those businesses;
 7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 8. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
 9. For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations) since age 18, the charge, the date of the charge, the

- name and address of the court involved, and the date and disposition, if any;
10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge occurred since age 18 and is not otherwise listed pursuant to Section 9(B)(5)(h) or Section 9(B)(5)(i), the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;
 11. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
 12. A current photograph;
 13. Fingerprints shall be taken by the Commission or any other qualified Law Enforcement Agency. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, a designated agency shall forward the fingerprint cards directly to the NIGC.
 14. The fee required by the Mescalero Apache Tribal Gaming Commission; and
 15. Any other information that the Mescalero Apache Tribal Gaming Commission deems relevant.

29-9-3. BACKGROUND INVESTIGATIONS TO DETERMINE ELIGIBILITY TO WORK IN GAMING ENTERPRISES.

- A. Upon receipt of a completed application and required fee for licensing, the Mescalero Apache Tribal Gaming Commission shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.
- B. Background checks of applicants will be performed pursuant to the following procedures:
 1. The Mescalero Apache Tribal Gaming Commission will provide applications to applicants upon request, and shall collect and maintain the applications;
 2. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, the Mescalero Apache Tribal Gaming Commission Employee Licensing Agent(s) will collect fingerprints from all applicants and forward the fingerprint cards directly to the NIGC. The NIGC will obtain a criminal history record from the F.B.I. on each applicant and forward such information to the Mescalero Apache Tribal Gaming Commission.
 3. The Mescalero Apache Tribal Gaming Commission shall investigate the information provided in the applications. This investigation will include:
 - a. Contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;
 - b. Interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Mescalero Apache Tribal Gaming Commission to make a determination concerning whether the applicant meets applicable eligibility requirements;
 - c. Reviewing relevant financial records of the applicant for the 3 years preceding the application; and
 - d. Contacting any state, federal, or other government agency that is referred to in the application.

- e. Reviewing state, county and tribal court criminal records.
- C. The Mescalero Apache Tribal Gaming Commission shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under this Ordinance. The Mescalero Apache Tribal Gaming Commission shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
- D. The Mescalero Apache Tribal Gaming commission will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Mescalero Apache Tribal Gaming Commission will perform additional investigations.
- E. In conducting a background investigation, the Mescalero Apache Tribal Gaming Commission and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.
- F. The Mescalero Apache Tribal Gaming Commission shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.
- G. With respect to principals, key employees and primary management officials, the Mescalero Apache Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigations for no less than 6 years from the date of termination of employment.
- H. Once the investigation is complete, the Mescalero Apache Tribal Gaming Commission will decide whether the applicant meets the eligibility criteria under this ordinance.
- I. All background investigations and reports shall remain confidential.

29-9-4. PROCEDURES FOR FORWARDING APPLICATIONS AND REPORTS.

- A. When a key employee or primary management official begins work at a gaming enterprise authorized by the Tribal-State Compact and this Ordinance, the Mescalero Apache Tribal Gaming Commission shall forward to the NIGC a completed suitability of employment report.
- B. The Mescalero Apache Tribal Gaming Commission shall forward the report referred to in Section 9(D)(4) to the NIGC and the State Gaming Representative within 60 days after an employee begins work.
- C. A key employee or primary management official who does not have a license shall not be employed after 90 days.
- D. The Mescalero Apache Tribal Gaming Commission shall prepare and forward to the NIGC and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
 - 1. Steps taken in conducting the background investigation;
 - 2. Results obtained;
 - 3. Conclusions reached; and
 - 4. The basis for those conclusions.
- E. The Mescalero Apache Tribal Gaming Commission shall submit with the report a copy of the eligibility determination made under Section 9(C)(6).
- F. The Mescalero Apache Tribal Gaming Commission may issue a license to any person or entity who:

1. Has provided a complete and accurate application and complied fully with any and all requests by the Mescalero Apache Tribal Gaming Commission for information concerning the background and activities of the applicant;
 2. If a natural person, has attained the age of 21 years;
 3. Is not a person whose prior activities, criminal record, if any, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the danger of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and
 4. Has not attempted to interfere or to influence, and has not interfered or influenced, unduly for its gain or advantage, any decision or process relating to gaming or the government of the Tribe.
- G. The Mescalero Apache Tribal Gaming Commission shall respond to any request for additional information from the NIGC or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the 30 day period under Section 9(E)(4) until the NIGC or the State Gaming Representative receives the additional information. However, in no event shall a request for additional information by the State Gaming Representative extend the 30 day period under Section 9(E)(4) of this Ordinance for a total period of more than 60 days from the date the State Gaming Representative received the Investigative Report.
- H. If, within the 30 day period described above, the NIGC or the State Gaming Representative provides the Mescalero Apache Gaming Commission with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Mescalero Apache Tribal Gaming Commission has provided an application and Investigative Report, the Mescalero Apache Tribal Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

29-9-5. FEES FOR LICENSING. The fees for gaming licenses and background investigations shall be set by the Mescalero Apache Tribal Gaming Commission from time to time and made available at any time upon request.

29-9-6. DURATION AND RENEWAL OF LICENSES. All employee gaming licenses issued by the Mescalero Apache Tribal Gaming Commission shall be valid for 3 years from the date of issuance. Any employee applying for renewal of a license that has submitted the required application and any other information required by the Mescalero Apache Tribal Gaming Commission at least 60 days before the expiration of the license may continue to be employed under the expired license until the Mescalero Apache Tribal Gaming Commission or NIGC, if required by the IGRA, takes final action on the renewal application. Any person renewing a gaming license shall provide updated material and information as requested on the renewal application form, but shall not be required to resubmit historical data already provided to the Mescalero Apache Tribal Gaming Commission.

SECTION 10. MANAGEMENT CONTRACT.

29-10-1. APPROVAL BY NIGC. Each Management Contract is subject to the prior approval of the National Indian Gaming Commission.

29-10-2. APPROVAL BY TRIBAL COUNCIL. Each Management Contract shall be approved by the Tribal Council and each Management Contractor shall be licensed by the Mescalero Apache Tribal Gaming Commission. Before final licensure by the Mescalero Apache Tribal Gaming Commission, the

Gaming Commission shall obtain and consider, in addition to the background information described in Section 9 above, the following information:

- A. Background information on the proposed Management Contractor, including its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed Management Contractor, and in the case of a corporation, the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly ten percent (10%) of its issues or outstanding stock.
- B. A description of any previous experience that each person listed in Section 10(B)(I) above has had with other gaming contracts, with Indian tribes, or with the gaming industry generally, including the name and address of any tribal government or licensing agency with which such person has had a contract relating to gaming.
- C. A complete financial statement of each person listed in Section 10(B)(1) above.
- D. The Mescalero Apache Tribal Gaming Commission shall contact each of the tribal governments and licensing agencies in Subsection 10(B)(2) above to determine the performance history of the proposed Management Contractor.
- E. The Mescalero Apache Tribal Gaming Commission shall arrange to have each proposed Management Contractor investigated to learn of his personal attributes and to determine whether the contractor has a prior criminal record or any pending criminal charges.
- F. The Mescalero Apache Tribal Gaming Commission shall obtain an independent verification of the completed financial statements of each proposed Management Contractor.
- G. The Mescalero Apache Tribal Gaming Commission shall undertake any additional steps it can to determine the character and reputation of each proposed Management Contractor.

29-10-3. MINIMUM CONTENTS. Any Management Contract approved by the Tribal Council shall contain at a minimum the following:

- A. A provision requiring at least a monthly financial accounting of the gaming enterprise's income and expenses, with an annual financial accounting to be prepared by an independent auditor who is acceptable to the Tribe.
- B. A provision setting forth an absolute cap on payment of management fees such that management fees shall not exceed thirty percent (30%) of net revenues.
- C. A defined term limit for the contract that does not exceed federal law.
- D. A provision guaranteeing the Tribe a minimum guaranteed payment which shall always take precedence over the management contractor's payment.
- E. A defined ceiling for repayment of development and contractor's costs.

29-10-4. WHEN EFFECTIVE. A Management Contract shall be of no force or effect until affirmatively approved by the National Indian Gaming Commission and until the Management Contractor is licensed by the Mescalero Apache Gaming Commission.

SECTION 11. PROVIDERS OF CLASS III GAMING EQUIPMENT OR SUPPLIES.

29-11-1. STANDARDS. Within 30 days after the effective date of this Ordinance, the Mescalero Apache Tribal Gaming Commission will adopt standards for any and all Class III gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Gaming Enterprise after the effective date of this Ordinance for use in any Class III gaming, which standards shall be at least as strict as the comparable standards applicable to Class III gaming equipment, devices or supplies within the State of Nevada. Any and all Class III gaming equipment, devices or supplies acquired by the Gaming Enterprise

after the effective date of the Compact shall meet or exceed the standards thereby adopted, and any and all Class III gaming equipment, devices, or supplies utilized by the Gaming Enterprise in its gaming activities as of the effective date of the Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than 1 year after the effective date of the Compact.

29-11-2. LICENSE REQUIRED. Prior to entering into any future lease or purchase agreement for Class III gaming equipment, the Gaming Enterprise shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Mescalero Apache Tribal Gaming Commission to license those persons in accordance with Section 10 above.

29-11-3. INSTALLATION. The seller, lessor, manufacturer, or distributor shall provide, assemble and install all Class III gaming equipment, devices and supplies in a manner approved and licensed by the Mescalero Apache Tribal Gaming Commission.

SECTION 12. FINANCIAL PRACTICES AND REPORTING.

29-12-1. MONTHLY REPORTS. On or before the 20th day of each month, the Gaming Enterprise shall complete a financial report for the preceding calendar month showing the amount of gross receipts derived from games of chance, the operating expenses incurred or paid and the net revenues derived from games of chance. It is the duty of the Gaming Enterprise to maintain and keep such books and records as may be necessary to substantiate the particulars of each report. If the Gaming Enterprise fails to complete such report within the time allowed, or if a report is not accurate and fully completed, the Mescalero Apache Tribal Gaming Commission shall notify the Tribal President of such deficiency within seven calendar days.

29-12-2. MAINTENANCE OF BOOKS AND RECORDS; MESCALERO APACHE TRIBAL GAMING COMMISSION ACCESS. Full and accurate books of account, in accordance with generally accepted accounting principles shall be kept at the places of business of the Mescalero Apache Gaming Enterprise, showing the condition of the business and all transactions. The Gaming Enterprise is authorized to open and maintain bank accounts pursuant to written instructions from the Tribal President or Tribal Council Resolution. All books and records shall be maintained for at least five years, including:

- A. Revenues, expenses, assets, liabilities and equity for each Gaming Facility;
- B. Daily cash transactions for each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;
- C. Returned checks, hold check or other similar credit instruments;
- D. Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;
- E. Contracts, correspondence, and other transaction documents relating to all vendors and contractors;
- F. Records of all tribal gaming enforcement activities;
- G. Audits prepared by or on behalf of the Tribe; and
- H. Personnel information on all Gaming Enterprise employees or agents, hours worked, employee profiles, and background checks.

29-12-3. ALLOWABLE OPERATING EXPENSES. No item of expense shall be incurred or paid in connection with operating or conducting any game of chance except a bona fide expense, which is related and necessary for the operation of the Gaming Enterprise.

29-12-4. DEPOSIT OF GROSS RECEIPTS; PAYMENT OF OPERATING EXPENSES. All gross receipts shall be deposited in an operating account of the Gaming Enterprise. Withdrawals from such account shall be made by consecutively numbered checks with two signatures duly signed; by wire transfer, or automated clearing house (ACH) with Tribal approval, or by an officer of the Mescalero Apache Tribe or other representatives duly authorized by the Gaming Enterprise Board, payable to a specific person or organization. No check shall be drawn to “cash” or a fictitious payee.

29-12-5. AUDITS. The Mescalero Apache Tribal Executive Committee shall retain a certified public accountant as the independent auditor of the Gaming Enterprise. The auditor shall not less frequently than annually (but more frequently as the Gaming Enterprise may require) report to the Executive Committee on the auditor’s examination of the books and records of the Gaming Enterprise, and on the auditor’s recommendations with respect to management of the Gaming Enterprise and any failure to comply with applicable law or contractual obligations. Copies of all audits shall be promptly provided to the Tribal President and the Mescalero Apache Tribal Gaming Commission. The Commission shall provide copies of all audits to the National Indian Gaming Commission and the State Gaming Representative (to the extent required by law).

29-12-6. AUDIT OF CONTRACTS. Any contract for supplies, services (except contracts for professional legal or accounting services as provided by), or merchandise in an amount greater than \$25,000 annually, which contract relates to gaming activities, shall be subject to annual outside independent certified audits.

29-12-7. DISPOSITION OF NET REVENUES. The net revenues derived from games of chance, less operating reserves, shall be deposited on a monthly basis into the general fund of the Tribe and such other accounts as designated by the Tribe. Net revenues deposited into the general fund of the Tribe shall be used for purposes in accordance with Section 13.

29-12-8. COMPLIANCE WITH BANK SECRECY ACT AND INTERNAL REVENUE SERVICE. The Gaming Enterprise shall take all steps necessary to comply with the applicable provisions of the Bank Secrecy Act, P.L. 91-508, Act of October 26, 1970, 31 U.S.C. §§ 5311-314 and all record-keeping and reporting requirements of the Internal Revenue Service.

SECTION 13. USE OF GAMING REVENUE.

29-13-1. CLASS II NET REVENUE. Net revenues from class II gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

29-13-2. PER CAPITA PAYMENTS. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3),(4).

SECTION 14. PROTECTION OF PATRONS.

29-14-1. LIABILITY TO PATRONS.

- A. The Tribe or the Gaming Enterprise shall at all times maintain in effect policies of liability insurance insuring the Tribe, the Gaming Enterprise, the Mescalero Apache Tribal Gaming Commission, and their agents and employees against any claims, demands or liability for bodily injury and property damages, made by a visitor, which claims were proximately caused by the conduct of the Gaming Enterprise and
1. Occurring at a gaming facility, other premises, structures, on grounds or involving vehicles and mobile equipment used by a gaming enterprise;
 2. Arising out of a condition at the Gaming facility or on premises or roads and passageways immediately adjoining it;

3. Occurring outside the gaming facility but arising from the activities of the Gaming Enterprise;
 4. As the result of a written contract that directly relates to the ownership, maintenance or use of a gaming facility or when the liability of others is assumed by the gaming enterprise; or
 5. On a road or other passageway on Indian lands while the visitor is traveling to or from the Gaming facility.
- B. The policies shall provide bodily injury and property damage coverage in an amount of at least \$1,000,000 per person and \$10,000,000 aggregate. The Tribe or Gaming Enterprise shall provide the Mescalero Apache Tribal Gaming Commission annually a Certificate of Insurance showing that the Tribe, and its agents and employees are insured to the extent and in the circumstances described in this section. The Commission shall provide the State Gaming Representative a copy of each Certificate of Insurance. If the State Gaming Representative so requests in writing, the Certificate of Insurance may be furnished directly to the State Gaming Representative from the insurance carrier or the insuring agency.

29-14-2. SPECIFIC WAIVER OF IMMUNITY. Nothing in this Ordinance shall serve to diminish the governmental powers or waive the sovereign immunity of the Mescalero Apache Tribe.

29-14-3. PUBLIC HEALTH AND SAFETY. The Mescalero Apache Tribal Gaming Commission shall establish for its Gaming Facilities health, safety, and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical code, the Uniform Fire Code, and the Uniform Plumbing Code, and any and all gaming facilities or additions thereto constructed by the Gaming Enterprise hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted by the Mescalero Apache Tribal Gaming Commission with respect to these standards at least annually. The Gaming Enterprise shall correct any deficiencies noted in such inspections within a reasonable period of time.

29-14-4. PATRON DISPUTE RESOLUTION PROCEDURES. The Policy of the Tribe is to encourage resolution of disputes at the lowest possible level, and as quickly as possible. These provisions should only be followed when the dispute cannot be resolved “on the floor” or by the General Manager.

- A. Whenever a patron of the gaming facility disputes the resolution of a conflict by the General Manager of the gaming facility or its employees, whether such dispute concerns payment of alleged winnings to a patron or other matters, and the General Manager and the patron are unable to resolve the dispute to the satisfaction of the patron, the General Manager shall inform the patron of his/her right to request that the Mescalero Apache Tribal Gaming Commission conduct an investigation.
- B. Upon request of the patron, the Mescalero Apache Tribal Gaming Commission, through an agent, shall conduct whatever investigation it deems necessary and shall determine its recommendation for resolution of the dispute.
- C. Within 30 days after the date that the Mescalero Apache Tribal Gaming Commission first receives notification from the General Manager or a request to conduct an investigation from the patron, the Mescalero Apache Tribal Gaming Commission shall make a recommendation to resolve the dispute. If the recommendation concerns law enforcement action, then the Mescalero Apache Tribal Gaming Commission shall take action to initiate the enforcement action by appropriate authority. If the recommendation concerns action to be taken by management, the Mescalero Apache Tribal Gaming Commission shall transmit its recommendation to the General Manager with a copy to the patron.
- D. The Gaming Commission shall then issue a written decision and mail it to the parties. The

decision of the Mescalero Apache Gaming Commission shall be final and binding upon the patron and the General Manager and shall not be subject to judicial review or to other legal action in federal, state or tribal court.

SECTION 15. DENIAL, SUSPENSION OR REVOCATION OF LICENSES.

29-15-1. GROUNDS.

- A. NIGC Information.
1. If, after the issuance of a gaming license, the Mescalero Apache Tribal Gaming Commission receives from the NIGC reliable information indicating that a key employee or a primary management official is not eligible for employment under Section 9(E)(6) above, the Mescalero Apache Tribal Gaming Commission shall deny or suspend such license under the provisions of Section 14(B) below and follow the procedures in Section 14(B) through (H) as applicable.
 2. After a licensing hearing, the Mescalero Apache Tribal Gaming Commission shall decide to deny, suspend, revoke or to reinstate a gaming license, and the Mescalero Apache Tribal Gaming Commission shall notify the NIGC of its decision.
- B. OTHER GROUNDS. If a licensee makes a false statement in any application for a license, in any statement annexed thereto, or in any response to a request by the Mescalero Apache Tribal Gaming Commission for information; if a licensee is determined to have engaged in any prior activity unknown to the Commission at the time of licensing which, if known, would have been grounds for disapproval of a license; fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance; falsifies any books or records relating to any transaction connected with the operation or conduct of any game of chance; is convicted of any felony or gaming offense; interferes with, unduly influences, or attempts to interfere or unduly influence any decision or process of the government of the Tribe relating to gaming; or deliberately or substantially fails to provide information to or answer relevant questions of the Mescalero Apache Tribal Gaming Commission or otherwise fails to comply with this Gaming Ordinance or the terms of any license granted pursuant hereto; his or her license may be suspended and, after notice and a hearing before the Mescalero Apache Tribal Gaming Commission pursuant to this Section, such license may be revoked. This sanction is in addition to any other sanction that may be imposed under this Gaming Ordinance.
- C. NOTICE; IMMEDIATE SUSPENSION. Proceedings to deny, suspend or revoke a license shall be initiated by the Mescalero Apache Tribal Gaming Commission by serving a complaint upon the licensee. If, in the Mescalero Apache Tribal Gaming Commission's judgment, the public interest; the effective regulation and control of gaming; or the safe, fair and honest operation and conduct of games of chance so require, the Mescalero Apache Tribal Gaming Commission may suspend a license immediately, pending the holding of a hearing. Such an immediate suspension shall take effect upon service of the complaint upon the licensee.
- D. CONTENTS OF COMPLAINT; SERVICE. The complaint shall set forth the violations of this Gaming Ordinance that the Mescalero Apache Tribal Gaming Commission has reasonable cause to believe the licensee has committed. The Mescalero Apache Tribal Gaming Commission shall cause the complaint and notice of hearing to be served personally upon the licensee or any agent of the licensee, or to be sent by certified mail or overnight delivery to the licensee at the address shown upon the license. The complaint shall notify the licensee of the place and date of a hearing, such date to be not less than 20 days after the licensee receives a copy of the complaint.
- E. ANSWER; SUBPOENAS. Upon receipt of a complaint and notice of hearing, the licensee shall answer the complaint and shall inform the Mescalero Apache Tribal Gaming Commission

whether the licensee desires to present evidence. At the request of the licensee for good cause shown, or on its own motion, the Mescalero Apache Tribal Gaming Commission shall issue subpoenas for the attendance of witnesses and for the production of papers, books, records and documents.

- F. **HEARING; WRITTEN DECISION; NOTIFICATION TO NIGC.** The hearing shall be held and concluded without unreasonable delay. The Mescalero Apache Tribal Gaming Commission shall hear the matter and make a decision in writing, including findings of fact in support of its decision. The Mescalero Apache Tribal Gaming Commission shall issue its decision within 30 days of the hearing. The licensee shall be informed immediately of the decision and, in the event of a suspension or revocation of his/her license, of the effective date of the suspension or revocation.
- G. **SURRENDER OF LICENSE.** When the Mescalero Apache Tribal Gaming Commission denies, suspends or revokes a license, the licensee shall surrender the license to the Mescalero Apache Tribal Gaming Commission on or before the effective date of the denial, suspension or revocation. No license shall be valid as of the effective date of the denial, suspension or revocation, whether surrendered or not.
- H. **ADDITIONAL SANCTIONS.** Upon a determination to deny, suspend or revoke a license, the Mescalero Apache Tribal Gaming Commission, in addition to any other penalties that may be imposed, may declare the licensee ineligible to operate or conduct games of chance, to participate, directly or indirectly, in the operation or conduct of games of chance, or to apply for a license for a period not exceeding 12 months. Such declaration of ineligibility may be extended to include any primary management officials, key employees, owners, officers, or directors of the licensee, and any of its subsidiary organizations, parent organizations, or affiliates.
- I. **APPEAL TO TRIBAL COURT.** Any licensee aggrieved by a decision of the Mescalero Apache Tribal Gaming Commission, may appeal the order to the Tribal Court, and the Tribal Court shall have jurisdiction to consider and resolve such appeal. The Tribal Court shall affirm the order of the Mescalero Apache Tribal Gaming Commission unless such order was entered in violation of due process, was arbitrary or capricious, or was otherwise in contravention of applicable law. The Tribal Court may reverse, vacate, or modify the order of the Mescalero Apache Tribal Gaming Commission if the Tribal Court determines that the order was unlawful. In reaching its decision, the Tribal Court shall consider only such evidence relating to the order from which appeal is taken as appears in the records of the Mescalero Apache Tribal Gaming Commission and was available to the Mescalero Apache Tribal Gaming Commission at the time of its decision. Any reversal or modification of the Mescalero Apache Tribal Gaming Commission's prior determination shall be reported to the NIGC.

SECTION 16. PROHIBITED ACTS.

29-16-1. PROHIBITED ACTS. In addition to the acts prohibited above, it shall be a violation of this Ordinance for any person to:

- A. Conduct or participate in any gambling on the Reservation other than at an authorized and licensed Gaming Facility, or traditional Class I or Class II gaming when conducted by a nonprofit organization as permitted by the Tribal Council.
- B. Receive, distribute, apply or divert any property, funds, proceeds, or other assets of the Gaming Enterprise to the benefit of any person except as authorized by this Ordinance, the Tribal-State Compact, NIGC Regulations or IGRA.
- C. Tamper with any Gaming Device or Gaming Equipment used in the conduct of any gaming activity with the intent to cause any person to win or lose any wager other than in accordance

with the publicly announced rules of the Gaming Enterprise.

- D. Do any other act in connection with the conduct of any Gaming Enterprise with the intent to affect the outcome of any wager other than in accordance with the publicly-announced rules of such Gaming Enterprise.
- E. Alter or misrepresent the outcome of any other event on which wagers have been made after the outcome is made sure but before it is revealed the players.
- F. Place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.
- G. Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Device or Gaming Equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.
- H. Place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including past-posting and pressing bets.
- I. Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets.
- J. Manipulate, with the intent to cheat, any component of an electronic Game of Chance or Gaming Device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to manipulating a Gaming Device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.
- K. Knowingly use other than coins or tokens approved by the Mescalero Apache Tribal Gaming Commission or other lawful coin or legal tender of the United States of American, or to use a coin not of the same denomination as the coin intended to be used in the Gaming Device.
- L. Possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game.
- M. Use any device or means to cheat, or to possess any such device while at the Gaming Facility.
- N. Knowingly entice or induce another to go to any place where gaming is being conducted or operated in violation of the provisions of this Ordinance, IGRA, the Compact, or other applicable law and regulation with the intent that the other person play or participate in that gaming.
- O. Willful obstruction of any Commission investigation.

SECTION 17. CIVIL PENALTIES.

29-17-1. CIVIL PENALTIES. Any person or entity that violates any provision of this ordinance shall be subject to civil penalties, termination of employment by the Gaming Enterprise, denial or revocation of a gaming license, exclusion from attendance at any Gaming Facility, or exclusion from the Reservation if a Non-Member of the Tribe. The Mescalero Apache Tribal Gaming Commission may impose a fine and may require restitution. The Mescalero Apache Tribal Gaming Commission shall have the jurisdiction to impose any penalties on any person or entity within the jurisdiction of the Tribe. Civil penalties may include requiring any person who violates this ordinance to pay the expenses and fees incurred by the Gaming Enterprise, the Commission or the Tribe in enforcement activities of any kind connected to the person found to have violated any provision of this Ordinance.

SECTION 18. ENFORCEMENT; JURISDICTION; SUBPOENAS.

29-18-1. CIVIL REMEDIES IN COURT. The Mescalero Apache Tribal Gaming Commission may bring a civil action in the Tribal Court against any person who violates this Gaming Ordinance or engages in an activity or activities prohibited herein and recover monetary damages, attorney fees, injunctive relief, and/or any other relief that is just and equitable under the circumstances. The Tribal Court may order a person who commits an intentional or willful violation to pay punitive damages, which shall be assessed in an amount not to exceed 3 times the actual damages or \$1,000.00, whichever is greater. The Tribal Court may order a civil penalty not to exceed \$5,000.00 for each day that a violation occurs and for each separate violation. Any person who violates this Gaming Ordinance, or whose employees or agents in the course of their employment or agency violate this Gaming Ordinance, may have the right to engage in business on the Reservation suspended or terminated. Nothing in this Gaming Ordinance shall be construed to authorize or require the exercise of criminal jurisdiction over non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

29-18-2. TRIBAL COURT JURISDICTION. Except as otherwise provided in this Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Gaming Ordinance; provided, however, that the Tribal Court shall defer the exercise of its jurisdiction until any applicable administrative remedies have been exhausted, and provided further that nothing in this Gaming Ordinance is intended nor shall it be interpreted to preclude prosecution in federal court pursuant to the IGRA, as it may be amended from time to time, any regulations promulgated thereunder, any other applicable federal or tribal law, or prosecution in state court pursuant to an effective memorandum of understanding with the District Attorney for the Twelfth Judicial District as approved by the Mescalero Apache Tribal Council. Tribal Court jurisdiction shall be concurrent with State courts and arbitration, to the extent permitted by law.

29-18-3. ENFORCEMENT OF MESCALERO APACHE TRIBAL GAMING COMMISSION SUBPOENAS. If a person subpoenaed to attend or to produce books, accounts, records, or other documents in any investigation or hearing conducted by the Mescalero Apache Tribal Gaming Commission fails to obey the command of the subpoena without reasonable cause, or if a person in attendance at any hearing or investigation refuses, without lawful cause, to be examined, to answer a legal and pertinent question, or to exhibit any book, account, record, or other document when ordered to do so by the representative of the Mescalero Apache Tribal Gaming Commission conducting such investigation or hearing, the Mescalero Apache Tribal Gaming Commission may apply to the Tribal Court for an order directing the person to show cause why he should not comply with such subpoena. For purposes of this Ordinance, if granted immunity by the Commission or the Tribal Court in writing no person shall be excused from testifying or producing any books, accounts, records, or other documents in any investigation or hearing on the ground that such testimony or documentary evidence may tend to incriminate him or her. "Immunity" means that a person shall not be prosecuted, punished, or subjected to any penalty or forfeiture resulting from such testimony or production, provided that no person shall be exempt from prosecution or punishment for committing perjury under a grant of immunity.

SECTION 19. SEVERABILITY.

29-19-1. SEVERABILITY. In the event any section or provision of this ordinance or its application to any particular activity is held to be invalid, the remaining sections and provisions of this ordinance and the remaining applications of such section or provision shall continue in full force and effect.

SECTION 20. SOVEREIGN IMMUNITY.

29-20-1. SOVEREIGN IMMUNITY. The Tribe does not in any way waive its sovereign immunity from suit in any court to contest the validity of this ordinance or in any other matter. Nothing in this Ordinance is intended to waive the sovereign immunity of the Tribe.

SECTION 21. AMENDMENTS.

29-21-1. AMENDMENTS. This Ordinance may be amended by official action of the Tribal Council.

SECTION 22. REPEAL OF PRIOR LAWS.

29-22-1. PRIOR ACTS REPEALED. This Gaming Ordinance, upon becoming effective, and only then, shall operate to repeal all prior inconsistent laws.

SECTION 23. EFFECTIVE DATE.

29-23-1. EFFECTIVE DATE. This Ordinance shall be effective as of the date of its approval by the National Indian Gaming Commission.

CHAPTER 30

DOMESTIC VIOLENCE.

SECTION 1. GENERAL.

30-1-1. PURPOSE. Domestic violence is a serious crime against the family and the Tribal community as a whole. The purpose of this Chapter is to ensure the immediate intervention of law enforcement, the Tribal Court system and domestic violence victim resources because such intervention is key to mitigating the damage of and preventing future domestic violence.

30-1-2. DEFINITIONS. As used in this chapter:

- A. "Alleged victim's residence" means the place at which the victim(s) of domestic violence was residing at the time of the alleged domestic violence. The victim's residence shall be presumed to belong to the victim(s). Such presumption may be overcome at any hearing held in regards to the alleged domestic violence.
- B. "Domestic violence" means that criminal offense defined at Section 10-26-1 of the Tribal Code.
- C. "Member of the household" or "household member" includes any individual that has or had a social relationship that is or was intimate or romantic in nature regardless of whether he or she currently resides with the perpetrator. Examples of a member of the household include: a current or a former spouse; an alleged victim who is related by blood; an alleged victim who is related by an existing or prior marriage; an alleged victim who resides or formerly resided with the alleged perpetrator; an alleged victim with whom the alleged perpetrator has a child in common; a current or a former dating partner; a current or former sexual partner; or the minor child of the alleged victim or the alleged perpetrator.

SECTION 2. ORDERS OF PROTECTION.

30-2-1. PETITION FOR ORDER OF PROTECTION.

- A. A Petition for Order of Protection under this Section may be filed by:
 - 1. Any person claiming to be the victim of domestic violence;
 - 2. Any adult member of the household or family of an alleged victim of domestic violence, on behalf of the alleged victim where the alleged victim is a minor or otherwise incompetent to protect themselves; or
 - 3. The Tribal Prosecutor.
- B. A Petition shall allege the existence of domestic violence, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
- C. A Petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
- D. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for an offense of domestic violence, the Court or the arresting Reservation Law Enforcement officer shall advise the alleged victim(s) of the right to file a Petition under this section without cost.
- E. The Petitioner, or the victim(s) on whose behalf a Petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining an Order of Protection; but the Petition shall state whether any other action is pending between the Petitioner or victim(s) and the Respondent. The B.I.A. Branch of Law Enforcement, the Tribal Prosecutor's Office and the

Tribal Court shall keep standard Petition forms and make such forms available upon request to victims of domestic violence.

30-2-2. PROCEDURE FOR ISSUANCE OF AN ORDER OF PROTECTION. Upon the filing of a Petition for Order of Protection, the Court shall:

- A. Immediately grant an Ex-parte Order of Protection, based on the specific facts stated in the affidavit or the verified Petition, the Court has reason to believe that the Petitioner, or the person on whose behalf the petition has been filed, is the victim of an act of domestic violence committed by the Respondent, and the Petitioner is in immediate danger of suffering further domestic violence.
- B. Cause an Ex-parte Order of Protection, together with notice of hearing, to be served immediately on the Respondent by Reservation Law Enforcement Officers or Tribal Court Process Server at the discretion of the Court. Service must be made by posted notice, pursuant to Section 30-1-7, if personal service cannot be completed within twenty-four (24) hours.
- C. Within ten (10) days after the granting of the Ex-parte Order of Protection, hold a hearing to determine whether the order should be vacated, extended for up to an additional six (6) months, or modified in any respect.
- D. If an Ex-parte Order of Protection is not granted, serve notice of appearance upon both parties and hold a hearing on the petition for Order of Protection within seventy-two (72) hours after the filing of the petition; provided that, if notice of hearing cannot be personally served within twenty-four (24) hours, the parties shall be served by posted notice, and the court shall hold a hearing on the Petition within ten (10) days after the filing of the Petition.

30-2-3. CONTENTS OF AN ORDER OF PROTECTION. An Ex-parte Order of Protection, or an Order of Protection entered after notice and hearing, shall when deemed appropriate by the Court include the following provisions:

- A. Include a finding of the Court that the Respondent is a credible threat to the physical safety of the Petitioner and/or other victims and restrain the Respondent from committing any acts of domestic violence;
- B. Exclude the Respondent from the residence of the victim(s), regardless of whose name is listed as the owner or renter of the residence;
- C. Exclude Respondent from place of employment or school of victim(s) or the children of the victim while the victim or the victim's children are present;
- D. Restrain the Respondent from being within the immediate proximity of Petitioner or the victim(s) and from any contact, whether directly or indirectly, with the Petitioner or victim(s) via in person communication, telephone, text messaging, mail, email, social media, or by any other means;
- E. Prohibit the Respondent from possessing or using a firearm for the duration of the Order;
- F. Award temporary custody or establishing temporary visitation rights with regard to minor children of the Respondent on a basis which gives primary consideration to the safety of the Petitioner/victim(s) or the minor children. If the court finds that the safety of the Petitioner/victim(s) or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision or deny visitation entirely, as needed, to guard the safety of the alleged victim(s) and the minor children. Any temporary custody order concerning children shall provide for child support and temporary support for the person having custody of the children, in accordance with Chapter 3, Section 4, Duty to Pay Support and Child Support Amount;
- G. Order temporary guardianship with regard to an elderly or handicapped victim(s) of domestic

violence, if necessary, for the safety of the elderly or handicapped person;

- H. Award temporary use and possession of property of the Respondent, however such an order shall not affect title or ownership of such property;
- I. Restrain both parties from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures;
- J. Order the Respondent to timely pay any existing debts of the Respondent, including mortgage or rental payments, necessary to maintain the alleged victim(s) in his or her residence;
- K. Describe any prior orders of the Court relating to domestic matters which are suspended or altered by the Order of Protection;
- L. Notify the parties that the willful violation of any provision of the Order constitutes contempt of court punishable by a fine or imprisonment or both pursuant to Section 10-18 of the Mescalero Apache Tribal Code and constitutes a violation of this Chapter for which civil penalties may be assessed; and
- M. Order any other lawful relief as it deems necessary for the protection of any alleged or potential victim of domestic violence, including orders or directives to the B.I.A. Branch of Law Enforcement, in the Court's discretion.

30-2-4. DURATION AND MODIFICATION OF ORDER OF PROTECTION. The provisions of the Order shall remain in effect for the period of time stated in the Order, not to exceed six (6) months unless extended by the Court at the request of any party for good cause shown. Either party may request a hearing to modify or extend an Order of Protection.

30-2-5. ENFORCEMENT OF ORDER OF PROTECTION.

- A. If either the Petitioner or Respondent of an Order of Protection is aware of violation of the terms of the Order of Protection, that person may file an affidavit with the Tribal Court alleging such violation.
- B. Upon receipt of a complaint alleging violation of the Order of Protection, the Tribal Court shall schedule a hearing to be held within five (5) days to determine whether a violation occurred.
- C. If any Reservation Law Enforcement Officer witnesses an act which violates the term of the Order of Protection the Officer may make a warrantless arrest of the party violating the terms of the Order of Protection. In addition to charging a person with violation of an Order of Protection, a Reservation Law Enforcement Officer may file all other criminal charges arising from an incident of domestic violence when probable cause exists.

30-2-6. SERVICE OF ORDER OF PROTECTION. Orders of Protection shall be served personally upon the Respondent by a Reservation Law Enforcement Officer or Tribal Court Process Server at the discretion of the Court. If the Respondent cannot be located within twenty-four (24) hours, the Order of Protection shall be mailed by the Court by Certified Mail to the Respondent's last known address and Reservation Law Enforcement Officers or Tribal Court Process Server shall post a copy of the Order of Protection in three (3) public places on the Reservation.

SECTION 3. PRE-TRIAL RELEASE.

30-3-1. MANDATORY DETENTION PERIOD. No person arrested for allegedly committing domestic violence shall be released from detention until after the expiration of twenty-four (24) hours from the time of arrest except where he or she proves the need for release due to an extreme medical emergency or the death of an immediate family member and provided that such release does not represent an imminent danger to the alleged victim(s).

30-3-2. CONDITIONS OF PRE-TRIAL RELEASE.

- A. All orders issued prior to trial for the release of an alleged perpetrator of domestic violence may include provisions prohibiting: threats, harassment or any direct or indirect communication with the alleged victim(s); the alleged perpetrator from being within a certain physical distance of the alleged victim(s); further acts of domestic violence; consumption of alcohol or narcotics; possession of firearms; and such other conditions of release deemed necessary by the Tribal Court to protect the alleged victim(s).
- B. Further, each order issued pursuant to this Section shall require that the alleged perpetrator be arrested immediately and incarcerated pending trial in the case that it is found that he or she violated such order.
- C. The Court shall not allow the alleged victim of domestic violence to post bond for the alleged perpetrator under any circumstances.

SECTION 4. LAW ENFORCEMENT & DOMESTIC VIOLENCE

30-4-1. ASSISTANCE & ORDERS OF PROTECTION. When an Order of Protection is issued, upon request of the Petitioner, the Court may order Reservation Law Enforcement to accompany and assist the Petitioner in taking possession of the alleged victim's residence or otherwise to assist in the execution of the order.

30-4-2. RESPONSE TO DOMESTIC VIOLENCE CALLS.

- A. A Reservation Law Enforcement Officer responding to a call regarding allegations of domestic violence shall take whatever steps are necessary to protect the victim(s) from further domestic violence, including:
 - 1. Advising the victim(s) of the remedies available under this Chapter, such as the right to file a written statement and to request an arrest warrant;
 - 2. Advising the victim(s) of the availability of medical care, counseling or other services,
 - 3. Arranging for transportation of the victim(s) to a medical facility or a place of safety,
 - 4. Assume temporary possession of any firearms or other weapons that are in the immediate possession of the alleged perpetrator;
 - 5. Accompanying the victim(s) to the residence for the purpose of retrieving victim's and/or children's clothing and personal effects required for their immediate needs, and/or
 - 6. Assisting in placing the victim(s) in possession of the residence.
- B. Where more than one party is alleged to be the perpetrator the Officer shall evaluate each complaint separately to determine to his or her best ability who is the predominate aggressor.
 - 1. In determining whether a party is the predominate aggressor, the Officer shall consider any history of domestic violence, relative severity of the injuries and which party poses the greatest danger to the other(s), likelihood of future injury to the other party(s), whether self-defense or defense of others was involved, and any other relevant factors.
 - 2. The Officer may then decide to arrest the predominate aggressor and not the other party, both parties, or neither party.

30-4-3. MANDATORY & DISCRETIONARY ARRESTS.

- A. A Reservation Law Enforcement Officer shall arrest an individual where the Officer: 1) has probable cause to believe that such individual committed domestic violence ; and 2) reasonably believes arrest is necessary to protect the alleged victim(s) and any other household members

from further domestic violence regardless of whether the alleged victim wishes to press criminal charges or not.

- B. A Reservation Law Enforcement Officer may arrest for domestic violence even if such Officer was not present when the offense took place where the Officer has probably cause to believe that domestic violence occurred within twenty-four (24) hours immediately preceding the commission of the offense.

SECTION 5. REPORTING & NOTICE

30-5-1. REPORTING DOMESTIC VIOLENCE.

- A. Any health care professional, school teacher or counselor, psychologist, social worker, probation officer, or community health representative knowing or suspecting that domestic violence is occurring or has occurred must report the matter immediately by telephone or otherwise to the B.I.A. Branch of Law Enforcement.
- B. Any person, including individuals, corporations, governmental entities and their agents, who in good faith makes or participates in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.
- C. Any person who is required to report domestic violence and who knowingly and willingly fails to make such a report pursuant to Paragraph A above shall be assessed a civil penalty in an amount not to exceed One Hundred and Eighty Dollars (\$180.00).
- D. Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading, and the report causes the arrest of the person identified in the report, shall be deemed guilty of the criminal offense of Slander/Libel, Section 10-10-1.
- E. Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading may, after notice of hearing, be assessed a civil penalty, in addition to the criminal penalty listed above, in an amount not to exceed One Hundred Eighty (\$180.00).

30-5-2. NOTICE TO VICTIM(S) OF RELEASE FROM DETENTION.

- A. The Tribal Court shall use its best efforts to notify Reservation Law Enforcement when an alleged perpetrator of or a person convicted of domestic violence will be released from detention. The Tribal Court shall attempt to notify Reservation Law Enforcement at least twelve (12) hours prior to release. If notice prior to release is not possible, then the Tribal Court shall notify Reservation Law Enforcement as soon as possible after release.
- B. Reservation Law Enforcement shall use its best efforts to notify the victim(s) that an alleged perpetrator will be or has been released from detention as soon as possible after receiving notice of release from the Tribal Court.

30-5-3. COPY TO LAW ENFORCEMENT AGENCY. Each order issued under this Chapter shall be forwarded by the Court Clerk immediately to the B.I.A. Branch of Law Enforcement.

SECTION 6. MISCELLANEOUS PROVISIONS.

30-6-1. RIGHT TO APPLY FOR RELIEF. A person's right to apply for relief under this Chapter shall not be affected by his/her leaving the residence or household in order to avoid domestic violence.

30-6-2. VICTIM'S RIGHTS & COURT PROCEEDINGS. Any alleged victim(s) shall:

- A. Be informed of hearing dates;
- B. Given the opportunity to speak at any pre-trial hearing to determine whether to allow release

pending trial and sentencing;

- C. Be present at all hearings; and
- D. Be given the right to request restitution from the alleged perpetrator.

30-6-3. CONFIDENTIALITY OF VICTIM(S) ADDRESS. The confidentiality of the victim(s) physical address shall be maintained to the greatest degree possible at all times.

30-6-4. TESTIMONY OF MINORS. The Court may consider any person under the age of eighteen (18) years competent to provide testimony in civil and criminal cases in which domestic violence is alleged without having first obtained permission for such testimony from the child's parent(s) or legal guardian.

30-6-5. TESTIMONY OF ALLEGED VICTIM & HEARSAY EXCEPTION.

- A. The alleged victim of domestic violence shall not be compelled to testify against his or her will under any circumstances.
- B. Any written statement made by the alleged victim under oath and signed by the victim describing the alleged acts of domestic violence shall not be considered inadmissible solely because of an hearsay objection, but shall be subject to ordinary judicial analysis for admissibility of evidence in the Court.

30-6-6. EXCEPTION TO HUSBAND-WIFE PRIVILEGES. The exceptions to the husband-wife privileges embodied at Section 2-5-25 (C) of the Code shall apply to cases involving domestic violence.

30-6-7. DOMESTIC VIOLENCE DOCKET & CONTINUANCES. To the greatest degree possible, the Tribal Court shall expedite cases involving domestic violence and protection orders. Further, continuances shall not be allowed unless the Court specifically finds that any continuance is necessary to preserve the due process rights of the alleged perpetrator or to protect the alleged victim from further domestic violence.

30-6-8. "NO DROP" PROSECUTORIAL POLICY.

- A. The Tribal Prosecutor may continue to prosecute a case of domestic violence even where the alleged victim(s) attempts to have charges dropped.
- B. The Tribal Prosecutor shall use his or her best efforts to discuss any plans to:
 - 1. Dismiss charges with the alleged victim(s) and the arresting Reservation Law Enforcement Officer before proceeding with a dismissal; or
 - 2. Offer a plea bargain to an alleged perpetrator of domestic violence with the alleged victim(s).
- C. Furthermore, the Tribal Prosecutor must state with specificity the reasons for the motion to dismiss.

30-6-9. MEDIATION PROHIBITED. The Court shall not order the parties to any proceeding under this Chapter into counseling, mediation, or any other type of mediation situation that would require an alleged victim to communicate directly with the alleged perpetrator, even if the alleged victim has the right to refuse to participate.

30-6-10. VIOLATION OF COURT ORDERS.

- A. Willful violation of an order under this Chapter and those Sections of Chapters 9 and 10 involving domestic violence offenses shall constitute contempt of court punishable as provided in Section 10-1-8 of the Code.
- B. A Reservation Law Enforcement Officer shall arrest without a warrant and take into custody any person who the Reservation Law Enforcement Officer has probable cause to believe has willfully

violated a court order issued under this Chapter.

- C. All provisions of an order issued under this Chapter shall remain in full force and effect until the order terminates or is modified by the Court.
- D. Violation of the order, including any prohibition against entering a residence, is not excused by the consent or permission of the alleged victim(s) or any other person.

30-6-11. FULL FAITH & CREDIT. The Mescalero Apache Tribal Court shall give full faith and credit to orders of protection and other domestic violence orders issued by other tribal courts, New Mexico courts, or court of other states pursuant to laws similar to this Chapter.

30-6-12. LIABILITY.

- A. A Reservation Law Enforcement Officer shall be immune from criminal or civil liability for making an arrest authorized by this Chapter, provided he/she acted in good faith and without malice.
- B. Where the Tribal Court, any detention center and Reservation Law Enforcement makes a reasonable attempt to provide notification that an alleged perpetrator of domestic violence is released from detention then such entity shall be immune from civil liability in the case that notice is not provided.

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CHAPTER 31

SEX OFFENDER REGISTRATION CODE

SECTION 1. GENERAL

31-1-1. NAME. This Chapter shall be known as the Sex Offender Registration Code of the Mescalero Apache Tribe and hereinafter referred to as “Sex Offender Registration Code,” “this Code” or “this Chapter.”

31-1-2. PURPOSE. The purpose of the Sex Offender Registration Code is to regulate the presence and certain activities of sex offenders residing within the exterior boundaries of the Mescalero Apache Indian Reservation in order to provide for the general welfare of the members of the Mescalero Apache Tribe and other individuals within the Tribe’s jurisdiction. The Mescalero Apache Tribe recognizes the need to regulate the presence and certain activities of sex offenders and to share specific information with other jurisdictions and the public to deter such offenders from committing future offenses and to raise awareness of the threat of sex offenses to the general welfare of the Tribe and any other individuals within the Tribe’s jurisdiction.

31-1-3. DEFINITIONS. The definitions provided below shall be used in this Chapter:

- A. “Abscond” means the purposeful failure of a sex offender to register with the Tribe or another jurisdiction where the offender is required to register by secretly changing residency or taking other actions to conceal his whereabouts, with the intent of avoiding registration.
- B. “Attempt” means an action that is undertaken with the specific intent of committing a specific crime, which falls short of actual commission of such crime.
- C. “Conspiracy” means an agreement by two (2) or more persons to commit an unlawful act.
- D. “Convicted” means:
 - 1. An adult sex offender who was subjected to penal consequences based on a conviction, however the conviction may be styled; or
 - 2. A juvenile sex offender is “convicted” for purposes of this Chapter if he or she is either:
 - a. Prosecuted and found guilty as an adult for a sex offense; or
 - b. Adjudicated as a juvenile but only if he or she was at least fourteen (14) years of age at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse, as defined in either (a) or (b) of 18 U.S.C. § 2241, or was an attempt or conspiracy to commit such offense.
- E. “Digitized” means conversion to a digital format for computer processing purposes.
- F. “Foreign conviction” means a conviction obtained outside the United States (U.S.).
- G. “Employee” means an individual who is self-employed or employed by another entity, including the Tribe, regardless of compensation for work performed. For purposes of this Chapter a volunteer, unpaid intern, transient worker, or day-worker is an employee.
- H. “Immediate” and “immediately” means within three (3) business days.
- I. “Imprisonment” means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. For example, imprisonment includes confinement in a federal, military, foreign, B.I.A., state, county, or city “prison,” “jail,” or other similar type of facility.
- J. “Jurisdiction” means any state of the United States, the District of Columbia, the five principle

United States territories and any Indian tribes that have elected to function as registration jurisdictions under the Sex Offender Registration and Notification Act (SORNA).

- K. “Minor,” “juvenile,” or “child” means any person who has not attained the age of eighteen (18). All the aforementioned terms are used interchangeably.
- L. “Office” means the Sex Offender Registry Office of the Mescalero Apache Tribe.
- M. “Public Access Sex Offender Website” or “Registry Website” means that website created by Section 6 of this Chapter, which allows the public to access certain sex offender information.
- N. “Registry” means the electronic database created by Section 37-5-4 of this Chapter for the purpose of allowing access to all digitized information required by Section 37 5-3 by the Office and Reservation Law Enforcement and the sharing of such information with other jurisdictions in order that sex offender compliance may be tracked efficiently and effectively.
- O. “Resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps.
- P. “Sex offender” means a person convicted of a sex offense that is covered by Section 2, “Offenses Requiring Registration,” of this Chapter.
- Q. “Student” means a person who enrolls in or attends either a private or public educational institution, including a secondary school, trade or professional school, or an institution of higher learning.
- R. “Tier 1 sex offender” means a sex offender who is classified as belonging in the Tier 1 class established by § 37-3-2 of this Chapter.
- S. “Tier 2 sex offender” means a sex offender who is classified as belonging in the Tier 2 class established by § 37-3-3 of this Chapter.
- T. “Tier 3 sex offender” means a sex offender who is classified as belonging in the Tier 3 class established by § 37-3-4 of this Chapter.

SECTION 2. OFFENSES REQUIRING REGISTRATION

31-2-1. GENERAL. Any conviction for an offense referred to as a “sex offense” and described in this Section shall require registration.

31-2-2. TRIBAL SEX OFFENSES. Tribal sex offenses are:

- A. Those offenses specifically referred to in Sections 37-3-2 (A), 37-3-3 (A), and 37-3-4 (A) of this Chapter; and
- B. Any other Tribal offense not referred to elsewhere in this Chapter that involves:
 - 1. Any type or degree of genital, oral, or anal penetration;
 - 2. Any sexual touching of or contact with the intimate parts of a person’s body, either directly or over the clothing; or
 - 3. Any conduct that by its nature is a sex offense against a minor.
- C. However, consensual sexual conduct, where the following circumstances exist, does not constitute a sex offense:
 - 1. Both participants are adults and neither has custodial authority of the other; or
 - 2. Both participants are over the age of thirteen (13) and neither participant is more than four (4) years older than the other.

31-2-3. FEDERAL OFFENSES. Federal offenses are those defined at Sections 31-3-2 (B), 31-3-3 (B), and 31-3-4 (B) of this Chapter.

31-2-4. TRIBAL, STATE, LOCAL OR FOREIGN OFFENSES. Any tribal, state, local or foreign offense that is comparable to a Tribal offense requiring registration under this Code shall constitute a sex offense.

31-2-5. ATTEMPT OR CONSPIRACY TO COMMIT A SEX OFFENSE. Any attempt or conspiracy to commit any of the sex offenses specified in this Code shall constitute a sex offense.

31-2-6. REGISTRATION FOR EACH SEX OFFENSE. Each sex offender shall be required to ensure registration for each sex offense for which he or she has been convicted.

SECTION 3. TIERED OFFENSES

31-3-1. TIER CLASSIFICATION. Each sex offender shall be classified as a Tier 1, Tier 2 or Tier 3 offender based upon the Tier in which the sex offense, for which he or she has been convicted, is listed in this Section.

31-3-2. TIER 1. Tier 1 sex offenses include:

- A. The following Tribal sex offenses:
 - 1. False imprisonment of a minor for purposes of carrying out sexual contact with such minor, § 10-8-1 in the Tribal Code;
 - 2. Video voyeurism of a minor, § 10-8-2 in the Tribal Code;
 - 3. Possession or receipt of child pornography, § 10-8-3 in the Tribal Code; and
 - 4. Any other sex offense that is not a Tier II or Tier III offense.
- B. The following federal sex offenses:
 - 1. Video voyeurism of a minor as defined at 18 U.S.C. § 1801;
 - 2. Receipt or possession of material resulting from the exploitation of a minor as defined at 18 U.S.C. § 2252;
 - 3. Receipt or possession involving material that constitutes or contains child pornography as defined at 18 U.S.C. § 2252A;
 - 4. Use of misleading domain names on the internet as defined at 18 U.S.C. § 2252B;
 - 5. Use of misleading words or digital images on the internet as defined at 18 U.S.C. § 2252C;
 - 6. Coercion to engage in prostitution as defined at 18 U.S.C. § 2422 (a);
 - 7. Travel with the intent to engage in illicit conduct as defined at 18 U.S.C. § 2423 (b);
 - 8. Engaging in illicit conduct in foreign places as defined at 18 U.S.C. § 2423 (c);
 - 9. Failure to file a factual statement about an alien individual held for the purpose of prostitution or for any other immoral purpose as defined at 18 U.S.C. § 2424; and
 - 10. Transmitting information about a minor to further criminal sexual conduct as defined at 18 U.S.C. §2425;
- C. Any tribal, state, local or foreign sex offenses that are comparable to those Tribal sex offenses listed in Paragraph A of this Section;
- D. Military offenses specified by the U.S. Secretary of Defense under Section 115 (a) (8) (C) (i) of P. L. 105-119 (10 U.S.C. § 951) that are comparable to those Tribal sex offenses listed in

Paragraph A of this Section; and

- E. Any tribal, state, local, foreign convictions that have an element involving a sexual act or contact with another person that is not a Tier 2 or Tier 3 sexual offense.

31-3-3. TIER 2. Tier 2 sex offenses include:

A. The following Tribal offenses:

1. The use of minors in prostitution, § 10-8-5 of the Tribal Code;
2. Enticing a minor to engage in criminal sexual activity, § 10-8-6 of the Tribal Code;
3. Sexual contact with a minor between the ages of thirteen (13) and eighteen (18) years of age, whether contact is direct or through the clothing, that involves the intimate parts of the body, § 10-8-7 (A) of the Tribal Code;
4. Use of a minor in a sexual performance, § 10-8-8 of the Tribal Code;
5. Production for distribution of child pornography, § 10-8-4 of the Tribal Code;
6. Sex trafficking by force, fraud or coercion, § 10-7-10;
7. Sex trafficking of a minor, § 10-8-10; and
8. Transporting a minor with intent to engage in criminal sexual activity, § 10-8-9.

B. The following federal offenses:

1. Sex trafficking by force, fraud or coercion as defined by 18 U.S.C. § 1591;
2. Sexual abuse of a minor or ward as defined by 18 U.S.C. § 2243;
3. Abusive sexual contact as defined by 18 U.S.C. § 2244;
4. Sexual exploitation of children as defined by 18 U.S.C. § 2251;
5. Selling or buying a child(ren) as defined at 18 U.S.C. § 2251A;
6. Production or distribution of material resulting from the exploitation of a minor as defined at 18 U.S.C. § 2252;
7. Production or distribution of material constituting or containing child pornography as defined at 18 U.S.C. § 2252A;
8. Production of sexually explicit depictions of a minor for import into the U.S. as defined at 18 U.S.C. § 2260;
9. Transportation with the intent to engage in criminal sexual activity as defined at 18 U.S.C. § 2421;
10. Coercing a minor to engage in prostitution as defined at 18 U.S.C. § 2422 (b); and
11. Transporting a minor to engage in illicit conduct as defined at 18 U.S.C. § 2423 (a).

C. Any tribal, state, local or foreign offenses that are comparable to those Tribal sex offenses listed in Paragraph A of this Section;

D. Military offenses specified by the U.S. Secretary of Defense under Section 115 (a) (8) (C) (i) of P. L. 105-119 (10 U.S.C. § 951) that are comparable to those Tribal offenses listed in Paragraph A of this Section; and

E. Any sex offense for which an individual is convicted after such offender has already been convicted of a prior Tier 1 sex offense.

31-3-4. TIER 3. Tier 3 sex offenses include:

- A. The following Tribal offenses:
 - 1. Non-parental kidnapping of a minor, § 10-3-1 of the Tribal Code;
 - 2. Rape, § 10-7-5 of the Tribal Code;
 - 3. Sexual contact with a minor under the age of thirteen (13) years, § 10-8-7 of the Tribal Code.
- B. The following federal offenses:
 - 1. Aggravated sexual abuse as defined at 18 U.S.C. § 2241;
 - 2. Sexual abuse as defined at 18 U.S.C. § 2242;
 - 3. Abusive sexual contact where the victim is under the age of thirteen (13) as defined at 18 U.S.C. § 2244; and
 - 4. Commission of a sex offense resulting in the death of the victim as defined at 18 U.S.C. § 2245.
- C. Any tribal, state, local or foreign offenses that are comparable to those Tribal sex offenses listed in Paragraph A of this Section;
- D. Military offenses specified by the U.S. Secretary of Defense under Section 115 (a) (8) (C) (i) of P. L. 105-119 (10 U.S.C. § 951) that are comparable to those Tribal offenses listed in Paragraph A of this Section; and
- E. Any sex offense of which an individual is convicted after such offender has already been convicted of a prior Tier 2 sex offense.

SECTION 4. REGISTRATION.

31-4-1. DUTY TO REGISTER.

- A. Each sex offender shall register with the Tribe if the sex offender is:
 - 1. Convicted of a sex offense by the Mescalero Apache Tribal Court, even if the sex offender will not reside within the exterior boundaries of the Mescalero Apache Indian Reservation;
 - 2. Convicted of a sex offense by another jurisdiction but is within the exterior boundaries of the Reservation because he or she is imprisoned there at the completion of his sentence even if the sex offender was convicted, employed, resided or will reside or is a student elsewhere; or
 - 3. Convicted of a sex offense by another jurisdiction but is within the exterior boundaries of the Reservation because he or she is a student, employed or resides on the Reservation.
- B. A sex offender who must register with the Tribe shall also register in each jurisdiction where the offender is convicted of a sex offense; is imprisoned; resides; is employed; and is a student.

31-4-2. INITIAL REGISTRATION TIMING. Each sex offender (including foreign, federal or military sex offenders) required to register with the Tribe, shall register before release from imprisonment for that sex offense or, if not imprisoned, within three (3) days of sentencing or otherwise becoming subject to the Tribe's mandatory sex offender registration.

31-4-3. POLICIES AND PROCEDURES. The Office shall promulgate policies and procedures to ensure that:

- A. Each sex offender imprisoned or sentenced by the Tribe completes initial registration with the Tribe;
- B. When a sex offender initially registers with the Tribe, the Office shall inform the sex offender of all registration duties under Tribal and federal law;
- C. Each sex offender reads and signs a form stating that the duty to register has been explained and that the sex offender understands the registration requirements;
- D. Each sex offender is registered; and
- E. Upon entering the sex offender's information into the registry, such information is immediately forwarded to all other jurisdictions in which the sex offender is required to register.

31-4-4. REGISTRATION FOR PRIOR SEX OFFENSES. The Office shall promulgate policies and procedures to ensure registration of sex offenders convicted of an offense prior to the passage of the Sex Offender Registration Code who:

- A. Are incarcerated or under supervision, whether for a sex offense or some other crime; or
- B. Are already registered or subject to a pre-existing sex offender registration requirement; or
- C. Re-enter the Tribal Court system due to conviction for another crime.

31-4-5. TIMING OF INITIAL REGISTRATION FOR PRIOR SEX OFFENSES. Registration of those sex offenders listed in Section 31-4-4 shall occur, from the date of passage of this Code:

- A. Three-hundred and sixty (360) days for Tier 1 sex offenders;
- B. One-hundred and eighty (180) days for Tier 2 sex offenders; and
- C. Ninety (90) days for Tier 3 sex offenders.

31-4-6. FAILURE TO APPEAR FOR INITIAL REGISTRATION.

- A. In the event that a sex offender fails to appear for registration with the Tribe as required at Section 31-4-5 of this Code, the Office shall immediately inform the jurisdiction which gave notice to the Tribe that the sex offender was to begin residency, employment, or school attendance within the exterior boundaries of the Reservation, that the sex offender failed to appear for registration.
- B. Where information indicating an offender was to begin residency was not provided by another jurisdiction but by some other source, the Office shall notify Reservation Law Enforcement and

31-4-7. FREQUENCY AND DURATION OF REGISTRATION.

- A. A sex offender who is required to register with the Tribe shall, at a minimum, appear in person at the Office:
 - 1. For Tier 1 sex offenders: once (1) per year, for fifteen (15) years from the date of release from custody;
 - 2. For Tier 2 sex offenders: once (1) every one hundred eighty (180) days for twenty-five (25) years from the date of release from custody; and
 - 3. For Tier 3 sex offenders: once (1) every ninety (90) days from the date of release from custody for the rest of their lives.
- B. At each in person appearance the offender shall permit the Office to take a photograph of the offender and review existing information for accuracy; and, if any information has changed, the Office shall immediately notify all other registration jurisdictions of the change.

- C. A sex offender may have the period for which registration is required reduced under the following circumstances:
1. A Tier 1 sex offender may request that the registration period be reduced by five (5) years if the offender has met all the conditions listed below for a period of ten (10) consecutive years:
 - a. Not been convicted of any serious criminal offense leading to incarceration of one (1) or more years;
 - b. Not been convicted of any additional sex offense;
 - c. Successfully completed, without revocation, any period of supervised release, probation, or parole; and
 - d. Successfully completed an appropriate sex offender treatment program certified by the Tribe.
 2. A Tier 3 sex offender who was a minor at the time he or she committed the sex offense may request that the registration period be reduced to twenty-five (25) years if the offender has met all the conditions below for twenty-five (25) consecutive years:
 - a. Has not been convicted of any serious criminal offense resulting in incarceration for one (1) or more years;
 - b. Has not been convicted of any additional sex offense;
 - c. Successfully completed, without revocation, any period of supervised release, probation, or parole; and
 - d. Successfully completed an appropriate sex offender treatment program certified by the Tribe.

31-4-8. DUTY TO UPDATE REGISTRATION & RESPONSIBILITY OF THE OFFICE IN THE CASE OF UPDATED REGISTRATION.

- A. In addition to the requirements above, each sex offender required to register with the Tribe shall immediately appear in person to update any changes to required information detailed in Section 5 and as noted herein.
- B. In the event that a sex offender provides temporary lodging information as required at Section 31-5-18, the Office will notify the jurisdiction in which the sex offender will be temporarily lodged.
- C. A sex offender must provide notice at least twenty-one (21) days in advance of any travel to a foreign jurisdiction.
- D. The Office shall immediately notify the following of any change in the required registration information:
 1. All jurisdictions where a sex offender intends to reside, be employed, or attend school;
 2. All jurisdictions where the sex offender is either registered or required to register; and
 3. The U.S. Marshal's Service; and
 4. The Office shall also ensure this information is immediately updated in the National Crime Information Center (NCIC) and the National Sex Offender Registry (NSOR) website.

31-4-9. ABSCONDED SEX OFFENDERS.

- A. If the Office receives information that a sex offender has absconded, the Office shall make all

reasonable efforts to determine if the sex offender has actually absconded.

- B. The Office shall verify all information it receives about sex offenders who intend to be employed by the Tribe or enrolled in school within the Reservation and determine whether the offender actually became employed or enrolled.
- C. In the event no determination can be made as to whether a sex offender has absconded, the Office shall notify Reservation Law Enforcement and/or other appropriate law enforcement agencies if the Office has reason to believe the sex offender has absconded outside the Reservation boundaries.
- D. If the information indicating the possible absconding came from another jurisdiction or federal authorities, that jurisdiction or authorities shall be notified by the Office as to whether the sex offender has registered with the Tribe.
- E. If an absconded sex offender cannot be located, the Office shall:
 - 1. Update the Registry to reflect that the sex offender has absconded or cannot be otherwise located;
 - 2. Notify the U.S. Marshal's Service;
 - 3. Seek a warrant for the sex offender's arrest whether through the U.S. Marshal's Service or F.B.I. for a federal arrest warrant or Reservation Law Enforcement for a Tribal arrest warrant.
 - 4. Update the National Sex Offender Registry (NSOR) to reflect that the sex offender has absconded or is unable to be located;
 - 5. Enter the sex offender into the National Crime Information Center Wanted Person File.

SECTION 5. REQUIRED INFORMATION.

31-5-1. DUTY OF SEX OFFENDER. A sex offender who is required to register with the Tribe pursuant to Section 31-4-1 of this Code shall provide all of the required information detailed herein.

31-5-2. DUTY OF OFFICE. The Office shall ensure that all required information is collected from sex offenders.

31-5-3. DIGITIZATION. All required information obtained pursuant to this Section shall be, maintained by the Office in digitized form.

31-5-4. ELECTRONIC DATABASE. A sex offender registry shall be maintained in an electronic database by the Office and shall be in a form capable of electronic transmission, or otherwise electronically accessible by other jurisdictions.

31-5-5. CRIMINAL HISTORY. The following information related to each sex offender's sex offense criminal history is required:

- A. The dates of all arrests;
- B. The dates of all convictions;
- C. The sex offender's parole, probation or supervised release status;
- D. The sex offender's registration status; and
- E. Any outstanding arrest warrants.

31-5-6. DATE OF BIRTH. The sex offender's actual date of birth and any other date of birth used.

31-5-7. DNA SAMPLES.

- A. If the sex offender's DNA is not already contained in the federal Combined DNA Index System (CODIS), a DNA sample must be taken.
- B. DNA samples shall be submitted to an appropriate lab for analysis and entry of a DNA profile into the federal Combined DNA Index System (CODIS).

31-5-8. DRIVER'S LICENSE, IDENTIFICATION, PASSPORTS AND IMMIGRATION DOCUMENTS. A photocopy of any and all of the following belonging to or used by each sex offender is required:

- A. Driver's licenses issued by any jurisdiction;
- B. All identification cards, including tribal enrollment cards;
- C. All passports; and
- D. All immigration documents.

31-5-9. EMPLOYMENT INFORMATION. The following information related to each sex offender's employment is required:

- A. Name of employer; and
- B. Address of employer; or
- C. Where an offender is a transient/day labor employment, then as much information as to the usual names places of transient/day labor.

31-5-10. FINGER AND PALM PRINTS.

- A. Both finger and palm prints of a sex offender are required and shall be maintained in a digitized format.
- B. Finger prints shall be submitted to the Integrated Automated Finger Print Identification System (IAFIS) and palm prints shall be submitted to the FBI Central Database (Next Generation Identification Program).

31-5-11. INTERNET IDENTIFIERS. The following information related to a sex offender's internet-related activity is required:

- A. Any and all email addresses used by the sex offender;
- B. Any and all "Instant Message" addresses and identifiers;
- C. Any and all other designations or monikers used for self-identification in internet communications or postings; and
- D. Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

31-5-12. NAME. The following information is required:

- A. Each sex offender's full primary given name;
- B. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and
- C. Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

31-5-13. PHONE NUMBERS. The following information is required:

- A. Any and all land line telephone numbers; and
- B. Any and all cellular telephone numbers;

- C. Such numbers include any other designations used by an offender for the purpose of routing or self-identification in telephonic communications.

31-5-14. PHOTOGRAPH.

- A. A current photograph of the sex offender is required.
- B. Unless the appearance of a sex offender has not changed significantly, a new photograph is required:
 - 1. Every ninety (90) days for a Tier 3 sex offender;
 - 2. Every one hundred and eighty (180) days for a Tier 2 sex offender; and
 - 3. Every three hundred and sixty (360) days for a Tier 1 sex offender.

31-5-15. PHYSICAL DESCRIPTION. The following is required:

- A. A physical description of each sex offender;
- B. A general description of each sex offender's physical appearance or characteristics; and
- C. A description of any identifying marks, such as, but not limited to: scars, moles, birthmarks or tattoos of each sex offender.

31-5-16. PROFESSIONAL LICENSING INFORMATION. All licensing of a sex offender that authorizes the sex offender to engage in a specific professional occupation or carry out a trade or business.

31-5-17. RESIDENCE ADDRESS. The following information is required:

- A. The address of each residence at which a sex offender resides; and
- B. Any location or description that identifies where a sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

31-5-18. ABSENCE FROM RESIDENCE, INTERNATIONAL TRAVEL AND TEMPORARY LODGING. The following information is required where a sex offender will be: 1) absent from his or her residence for seven (7) days or more; or 2) traveling to a foreign jurisdiction, regardless of the length of time such offender will be away from his or her residence:

- A. Identifying information for any temporary lodging locations to be utilized by the sex offender; and
- B. The dates the sex offender will be staying at each temporary lodging location.

31-5-19. SCHOOL. The following information is required:

- A. The name of each school the sex offender is or will be a student; and
- B. The address of each school where the sex offender is or will be a student.

31-5-20. SOCIAL SECURITY NUMBER. The following information is required:

- A. A valid social security number of a sex offender; and
- B. Any social security number a sex offender has used in the past, valid or otherwise.

31-5-21. OFFENSE INFORMATION. The text of the provision of the law describing the sex offense in the respective jurisdiction that a sex offender has committed a sex offense is required.

31-5-22. VEHICLE INFORMATION. The following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

- A. License plate numbers;
- B. Registration numbers or identifiers;
- C. General descriptions of the vehicle, including at a minimum: color, make, model, and year; and
- D. Any permanent or frequent location where any such vehicle is kept.

SECTION 6. PUBLIC SEX OFFENDER REGISTRY WEBSITE.

31-6-1. REGISTRY WEBSITE. The Office shall use and maintain a Public Sex Offender Registry Website.

31-6-2. LINKS. The Registry Website shall include links to sex offender safety and education resources.

31-6-3. CORRECTION INSTRUCTIONS. The Registry Website shall include instructions on how an offender may seek correction of information that the individual contends is erroneous.

31-6-4. WARNINGS. The Registry Website shall include a warning that information contained on the Website should not be used to unlawfully injure, harass or commit a crime against any individual named in the Registry or residing or working at any reported addresses and that any such action could result in civil and criminal penalties.

31-6-5. SEARCH CAPABILITIES. The Registry Website shall have the capability of conducting searches by name of the sex offender, county, city, zip code, and geographic radius.

31-6-6. DRU SJODIN NATIONAL SEX OFFENDER WEBSITE. The Tribe shall include in the design of its Registry Website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Website and shall participate in that website as provided by the Attorney General of the United States.

31-6-7. INFORMATION TO BE MADE AVAILABLE FOR PUBLIC VIEWING. The following information shall be made available to the public on the Registry Website for each sex offender:

- A. Notice that he or she is in violation of registration requirements or cannot be located if the offender has absconded;
- B. All sex offenses for which the offender been convicted;
- C. The sex offense(s) for which the offender is currently registered;
- D. The address(es) of any employer(s);
- E. The address(es) of any school(s) where the offender is a student;
- F. The offender's name, including all aliases;
- G. A current photograph;
- H. A physical description;
- I. Residential address and, where needed, a description of the offender's habitual residence; and
- J. Vehicle license plate number(s), along with a description of the offender's vehicle(s).

31-6-8. PROHIBITED INFORMATION. The following information shall not be available to the public on the Registry Website for any sex offender:

- A. Any arrest(s) that did not end in conviction(s);
- B. His social security number;
- C. Internet identifiers;

- D. Any travel and immigration documents; and
- E. The identity of the victim(s).

31-6-9. SEX OFFENDERS UNDER WITNESS PROTECTION. Where a sex offender is under witness protection, the Tribe shall honor the request of the U.S. Marshal's Service or other federal or state agency responsible for witness protection by not including the original identity of the offender on the publicly accessible Registry Website.

SECTION 7. NOTIFICATION OF REGISTRATION OR UPDATES

31-7-1. LAW ENFORCEMENT. When a sex offender registers or updates his information with the Tribe, the Office shall:

- A. Immediately update the National Crime Information Center (NCIC) and the National Sex Offender Registry (NSOR);
- B. Immediately notify Reservation Law Enforcement, the Tribal Prosecutor and the Tribal Probation Office in all cases; and where the sex offense involved harm to a child: B.I.A. Social Services, and the Mescalero Apache Schools;
- C. Immediately notify any and all other jurisdictions where the sex offender is required to register due to his residency, school attendance, or employment; and
- D. Immediately notify the National Child Protection Act agencies, including any federal or state agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993, 42 U.S.C. § 5119a.

31-7-2. SORNA EXCHANGE PORTAL. The Office shall monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.

31-7-3. COMMUNITY. The Office shall ensure that there is an automated community notification process in place that ensures the following:

- A. When a sex offender registers or updates information with the Tribe, the Registry Website will be updated immediately.
- B. When a sex offender is to begin residency, employment, or school attendance within the exterior boundaries of the Reservation or within a certain geographic radius or zip code, notice is provided to the community by:
 - 1. An email notice that includes the name of the sex offender sent to all Tribal members and other Non-Tribal members, to the extent possible and requested, residing or working on the Reservation whose email addresses are known; and
 - 2. Posting of such notice at various public places within the exterior boundaries of the Reservation or publication in the Apache Scout.

SECTION 8. CRIMES & CIVIL SANCTIONS

31-8-1. CRIMINAL PENALTY FOR FAILURE TO REGISTER. Any Indian sex offender who shall fail to register as required under this Code shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a minimum of thirty (30) days and a maximum of six (6) months and a fine not to exceed Five Hundred Dollars (\$500.00).

31-8-2 HINDRANCE OF SEX OFFENDER REGISTRATION. Any Person who shall i) knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender; ii) knowingly assist a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Code; or iii) provide information to a law enforcement

agency regarding a sex offender which the person knows to be false shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to imprisonment for a minimum of thirty (30) days and a maximum of six (6) months and a fine not to exceed Five Hundred Dollars (\$500.00).

31-8-3. CIVIL PENALTY FOR FAILURE TO REGISTER. Any non-Indian sex offender who shall fail to register as required under this Code shall be considered to have committed a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to a fine of not to exceed Five Hundred Dollars (\$500.00), civil forfeiture, civil contempt and exclusion from the Reservation in accordance with § 10-17-1, *et seq.*

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CHAPTER 32

ENVIRONMENTAL POLICY ACT OF 1994

SECTION 1. GENERAL.

32-1-1. SHORT TITLE. This Act shall be known as the Mescalero Apache Tribe Environmental Policy Act of 1994 (the "Act").

32-1-2. TRIBAL COUNCIL FINDINGS AND DECLARATIONS. The Tribal Council of the Mescalero Apache Tribe (the "Tribal Council"), after careful review of the quality of the natural environment of the Mescalero Indian Reservation (the "Reservation") and the federal laws and policies relating to environmental regulation, finds and declares as follows:

- A. The federal government, through its various agencies and departments, has not provided adequate protection for the land, air, and water resources of the Reservation.
- B. Current, past, and proposed future uses of the natural resources of the Reservation have created or may create a threat to the environment and to the health and welfare of the residents of the Reservation.
- C. The Mescalero Apache Tribe (the "Tribe"), pursuant to its inherent sovereignty and federal law, possesses the authority to provide for the comprehensive regulation of environmental quality within the exterior boundaries of the Reservation.

32-1-3. DECLARATION OF POLICY. To promote the health and welfare of the residents of the Reservation and in furtherance of the sovereign right of self-governance of the Mescalero Tribe, the Tribal Council declares its commitment to the establishment and maintenance of the highest attainable standards of environmental quality within the exterior boundaries of the Reservation.

SECTION 2. ESTABLISHMENT.

32-2-1. ESTABLISHMENT. There is hereby established the Mescalero Environmental Protection Agency (MEPA).

32-2-2. GOVERNING BODY APPOINTMENT; TERMS; VACANCIES. MEPA shall be governed by a Board of Commissioners (the "Board"), which shall be composed of five (5) Commissioner. Three (3) of the five (5) shall be members of the Mescalero Apache Tribe. Two (2) Commissioners shall be ex-officio members of the Board, one designated representative each from the B.I.A. and the Indian Health Service (HIS). The President of the Mescalero Tribe with the advice and consent of the Tribal Council, acting by majority vote, with a quorum present shall appoint the Commissioners. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the terms of office, one of the original Commissioners shall be appointed for a term of two (2) years, one for a term of three (3) years, and one for a term of four (4) years. A vacancy on the Board howsoever caused will be filled for the remaining un-expired term by the appointment procedure set for thin this Section, provided that any appointment that does not begin coincident with the staggered terms will be shortened as necessary to maintain the staggered terms.

32-2-3 CHAIRMAN, QUORUM, MEETINGS. The President of the Mescalero Apache Tribe shall designate a Chairman from among the Board. The business of the Board will be conducted at meetings of the Board duly called and noticed and at which a quorum is present. A quorum shall consist of two (2) Commissioner. Any substantive action of the Board must be taken by the affirmative votes of at least two (2) Commissioners and must be recorded in a written resolution of the Board. The Board shall meet at such places and times as may be necessary for the discharge of its duties. Meetings of the Board may be called by the Chairman or by two (2) of the Commissioners. Any meeting of the Board shall be preceded by at least five (5) days' notice to the Commissioners.

32-2-3. DUTIES AND POWERS OF THE BOARD. The Board is hereby authorized and empowered to:

- A. Develop environmental codes and accompanying regulations and procedures to protect the environment and promote the quality of the land, air, and water resources of the Reservation, and to propose such codes and regulations for adoption by the Tribal Council.
- B. Issue, modify, and revoke permits and establish terms and conditions for any discharge into or upon the land, air, or water of the Reservation.
- C. Conduct hearings and receive testimony and documentary evidence of any nature relating to the quality of the environment on the Reservation.
- D. Establish rules and procedures to ensure maximum public participation in the decisions of the Board, consistent with applicable tribal and federal laws.
- E. Establish rules and procedures to protect the confidentiality of information that is proprietary in nature.
- F. Hire such staff and enter into such contracts for services as may be necessary and appropriate for maintaining and enforcing Tribal environmental codes and regulations and for the furtherance of the work of MEPA.
- G. Establish a system for the development and enforcement of programs and activities for mitigation of environmental impacts as reacquired, by Final Environmental Impact Statements issued pursuant to the provisions of National Environmental Protection Act (“NEPA”).
- H. With the approval of the Tribal Council, establish a system of civil fees, sanctions, and penalties for violations of Tribal environmental codes and regulations, provided, however, that no Me or penalty shall exceed \$5000 per day per violation, and provided further that no fine or penalty shall be imposed without notice and an opportunity for a hearing before the Tribal Court.

32-2-4. EMERGENCY STATEMENT OF POLLUTION.

- A. Issuance of Emergency Restraining Orders.
 - 1. Authority of Chairman of the MEPA Board of Commissioners. Upon receiving credible evidence that a pollution source or combination of sources is presenting an imminent danger to the health and welfare of residents of the Reservation or the environment of the Reservation, the Chairman may issue an emergency restraining order to restrain any person to stop the discharge of pollutants or otherwise causing or contributing to pollution, in accordance with this Section.
 - 2. Procedures for Issuance of Emergency Restraining Orders.
 - (a) The Chairman may issue an emergency restraining order if he or she has reasonable grounds to believe that a polluting activity may pose an immediate, imminent threat of irreparable injury, loss, or damage to the health, safety, or welfare of the residents of the Reservation or the integrity of the Reservation environment, or is in violation of a tribal or federal environmental law, regulation, code, or ordinance.
 - (b) Except as otherwise provided in this Code, written notice of the emergency restraining order shall be given to the owner, operator, agent, or other person with apparent or actual authority at the site of the polluting activity ("Adverse Party").
 - (c) No emergency restraining order shall be issued by the Chairman without notice to the Adverse Party, unless it clearly appears that immediate and irreparable injury, loss, or damage will result to the health, safety, or welfare of the residents

of the Reservation or the integrity of the Reservation environment before notice can be served. Every emergency restraining order shall:

- (i) Be written, endorsed with the date and hour of issuance, and filed with the Board of Commissioners within three (3) days of its issuance and entered on record;
 - (ii) Define the injury and, if applicable, state why the order was entered without notice, and
 - (iii) Expire within such time as is specified therein, not to exceed ten (10) days, unless within that time the Chairman, for good cause shown, requests a preliminary or permanent injunction.
- (d) The motion for a preliminary or permanent injunction shall be set down for hearing by the Board at the earliest possible time and shall take precedence over all matters except older matters of the same character. For good cause shown, the Board also may extend the emergency restraining order for up to an additional five (5) days or until the hearing.
 - (e) When the motion is heard, the Chairman shall proceed with the application for a preliminary or permanent injunction. Should the Chairman fail to do so, the Board shall dissolve the emergency restraining order.
 - (f) On two (2) days' notice to the Chairman, or on such shorter notice, as the Board may prescribe, the Adverse party may appear and move for the dissolution or modification of the emergency restraining order and, in that event, the Board shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B. Board Issuance of Preliminary and Permanent Injunctions.

- 1. Authority. The Board may issue a preliminary or permanent injunction to restrain any person to stop the discharge of pollutants causing or contributing to pollution that presents a substantial danger to the health, safety, or welfare of residents of the Reservation or the environment of the Reservation.
- 2. Procedures for Issuance of Preliminary or permanent Injunctions.
 - (a) No preliminary or permanent injunction shall be issued without notice to the Adverse Party and a hearing.
 - (b) Every order granting an injunction and every restraining order shall be specific in terms, shall describe in reasonable language, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, attorneys, and advocates, and upon those persons in active consent or participation with them who receive actual notice of the order by personal service or otherwise.
 - (c) A preliminary or permanent injunction may be granted on the following grounds:
 - (i) When it appears by the pleadings or affidavits on file that the Chairman is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of either for a limited period or perpetually, or that the commission or continuance of some act would produce great or irreparable injury to the health, safety, or welfare of residents of the

Reservation or the environment of the Reservation;

- (ii) When it appears that the Adverse Party is doing, threatens or is about to do, or is procuring or suffering to be done, some act in violation of a federal or tribal law, regulation, code, or ordinance; or
- (iii) In all cases where an injunction would be proper in equity.

SECTION 3. MISCELLANEOUS PROVISIONS.

32-3-1. REVIEW OF COMMISSION ACTIONS.

- A. **MESCALERO TRIBAL COURT.** The Mescalero Tribal Court shall hear appeals from final actions and decisions of the Board in accordance with such rules and procedures as MEPA may establish by regulation. Any affected party may seek review of any final action or decision of the Board by filing an appeal in the Tribal Court within thirty (30) days of the entry of the final action or decision from which the appeal is taken. The Tribal Court shall hear appeals from the final actions or decision only after exhaustion of all administrative remedies provided by MEPA. The Tribal Court shall, upon the petition of an affected party, conduct a review of the record of the proceedings of MEPA but shall not take new evidence. The Tribal Court may modify or reverse a decision or action of MEPA only where such action or decision is not supported by law or is clearly arbitrary and capricious. MEPA, upon request of the Tribal Court, shall provide to the Tribal Court a certified copy of all documents, records, transcripts, or other information that formed the basis for any action or decision as to which an affected party seeks review. The action of the Tribal Court on appeal or other appellate rights pursuant to the Mescalero Apache Tribal Code, shall be final.
- B. **REVIEW OF MEPA ISSUANCE OF PRELIMINARY OR PERMANENT INJUNCTIONS.** An Adverse Party aggrieved by a decision of the Board issuing or failing to issue a preliminary or permanent injunction is entitled to judicial review thereof. Proceedings for review under this Subsection shall be instituted by filing a petition in the Tribal Court. The petition shall be served and filed within five (5) days after service of the decision of the Board. Failure to file timely a petition for review shall be deemed a waiver of the right to appeal. The Tribal Court shall proceed to determine such petition as expeditiously as the ends of justice require. The filing of the petition shall not stay enforcement of the decision of the Board, unless the Board or the Tribal Court orders a stay upon such terms as either deems proper. The Tribal Court may affirm the decision of the Board; it may remand the case for further proceedings; or it may reverse the decision, in whole or in part, if substantial rights of the Adverse Party have been abridged because the Board's findings, inferences, conclusions, decisions, rulings, or orders are not supported by law or are clearly arbitrary and capricious.
- C. **STANDING OF MESCALERO TRIBE.** The Mescalero Apache Tribe, acting by and through the Tribal Council, shall have standing to object to any final action or decision of MEPA and may appeal such final action or decision in the Tribal Court, subject to the provisions of this Section.

32-3-2. WAIVER OF IMMUNITY. The Tribal Council hereby waives the sovereign immunity of MEPA for the express and sole purpose of allowing reviews of MEPA actions by the Tribal Court under Tribal Law, provided that any such appeal must be timely and properly filed, and provided further, that such waiver is made only to the extent necessary to subject MEPA to suit for the sole purpose of declaring and adjudging rights and obligations under the environmental codes and regulations of the Mescalero Tribe. This waiver is strictly limited, specifically does not waive MEPA's immunity from suit for monetary damages, and specifically does not waive the sovereign immunity, or any officer, employee, or agent thereof.

32-3-3. UNLAWFUL ACTS.

- A. It is prohibited for any person:
 - 1. Forcibly, or by bribe, threat, or other corrupt practice, to obstruct or impede the activities of MEPA;
 - 2. To commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat Tribal environmental codes or regulations; or
 - 3. With knowledge and intent, falsely to verify by written declaration any report, application for permit, or any other document submitted to or requested by MEPA.
- B. Any person who commits any of the above prohibited acts may be subject to criminal penalties and also be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation.
- C. Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.
- D. The damages and sanctions for violation of this Section may be enforced in the Tribal Court by MEPA under such rules and procedures as MEPA may establish by regulation.

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CHAPTER 32A

SOLID WASTE MANAGEMENT CODE OF 1993

SECTION 1. SHORT TITLE; FINDINGS; DEFINITIONS

32A-1-1. SHORT TITLE. This Code shall be known as the Mescalero Apache Tribe Solid Waste Management Code of 1994.

32A-1-2. TRIBAL COUNCIL FINDINGS AND DECLARATIONS. The Tribal Council finds and declares as follows:

- A The increasing volume and variety of solid waste and hazardous waste being generated on the Reservation and throughout the State of New Mexico and the often inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety, and well-being by contributing to land, air, and water pollution, to the production of flies, rodents, and litter, to the waste of dwindling natural resources, and to the general deterioration of the environment.
- B The foregoing situation arises from the interaction of a number of factors, including but not limited to rapid population increase, decentralized urban growth, industrial expansion, agricultural changes, transportation improvements, and technological developments in the manufacturing, packaging, and marketing of consumer products, which collectively are placing planning, economic, and resource base limitations upon the availability of land for solid waste and hazardous waste disposal.
- C The economic and population growth of the Mescalero Apache Tribe and the State of New Mexico and the improvements in the standard of living have required increased industrial production and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste material.
- D Although land is too valuable a resource to be needlessly polluted, most solid waste is disposed of on land in open dumps and sanitary landfills; open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the land, air, and water.
- E The continuing concentration of population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid waste and hazardous waste resulting from the industrial, commercial, domestic, and other activities carried on in such areas.
- F As a result of the Clean Air Act (42 U.S.C.A. §7401 et seq.), the Water Pollution Control Act (33 U.S.C.A. §1251 et seq.), and other laws respecting public health and the environment, greater amounts of solid waste in the form of sludge and other pollution treatment residues have been created. Inadequate and environmentally unsound practices for the disposal or use of solid waste and hazardous waste have created greater amounts of soil, air, and water pollution and other problems for public health and the environment. The traditional methods of solid waste and hazardous waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.
- G Methods of solid waste management emphasizing source reduction, recovery, and recycling of all solid waste are essential to the long-range preservation of the health, safety, and wellbeing of the public, to the economic productivity of the Mescalero Apache Tribe and the State of New

Mexico, to the environmental quality of the Reservation and the State of New Mexico, and to the conservation of natural resources.

- H Disposal of solid waste and hazardous waste in or on the land without careful planning and management will present a danger to public health and the environment.
- I Millions of tons of recoverable material that could be used are needlessly buried each year. Methods are available to separate recoverable material from solid waste. The recovery and conservation of such material can produce numerous benefits to the Mescalero Apache Tribe, the State of New Mexico, and the United States.
- J The State of New Mexico is rapidly losing its ability safely and economically manage the solid waste it generates each year. Expansion of existing sanitary landfills and the establishment of new ones close to solid waste generation sources is becoming increasingly difficult due to local citizen opposition.
- K Significant savings could be realized by conserving material in order to reduce the volume or quantity of material that ultimately becomes solid waste. Solid waste contains valuable energy and material resources that can be recovered and used, thereby conserving increasingly scarce and expensive fossil fuels and virgin materials. The recovery of energy and material from solid waste and the conservation of energy and materials contributing to municipal solid waste streams can have the effect of reducing the volume of the municipal solid waste streams and the burden of disposing of increasing volumes of solid waste. The technology to conserve resources and to recover energy and materials from solid waste exists and is commercially feasible to apply.
- L The long-term protection of land, air, and water from pollution due to the handling, treatment, composting, and disposal of solid waste is best achieved by requiring financial assurances of the closure and post closure maintenance of solid waste facilities.
- M It is in the public interest to establish and maintain a comprehensive Tribal solid waste management policy, the objectives of which will be to manage and control solid waste and to prohibit the introduction of hazardous waste into the Reservation in order to protect the public health, safety, and wellbeing, to preserve the environment, and to provide for the maximum reuse of the resources contained in solid waste.

32A-1-3. PROHIBITION OF HAZARDOUS WASTE In order to protect the limited land, air, and water resources of the Reservation from irremediable hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, receiving, accepting, handling, transportation, treatment, storage, composting, processing, and disposal of hazardous waste is expressly prohibited within the exterior boundaries of the Reservation, except that MEPA may permit the establishment of a program for the collection, storage, transfer, transportation, and disposal off the Reservation of Hazardous waste generated or found on the Reservation, subject to such conditions as MEPA may impose.

32A-1-4. PROHIBITION ON DISPOSAL IN OPEN DUMPS. In order to protect the limited land, air, and water resources of the Reservation from irremediable hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservations and surrounding communities, disposal of solid waste in any open dump is expressly prohibited within the exterior boundaries of the Reservation.

32A-1-5. DEFINITIONS. Unless otherwise provided, the following definitions shall apply throughout this Code:

- A "B.I.A." means United States of America, Department of the Interior, Bureau of Indian Affairs.
- B "Mescalero Apache Tribe" means the Mescalero Apache Tribe, a federally recognized Indian tribal government.
- C "MEPA" means the Mescalero Environmental Protection Agency.

- D "Closure" means the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.
- E "Collection" means the act of collecting solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean removal.
- F "Composting" means the controlled microbial degradation of organic solid waste yielding a safe and nuisance free product.
- G "Construction" means the erection or building of new structures or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.
- H "Disposal" means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any soil, air, or water.
- I "Disposal facility" means a facility permitted to receive and dispose of solid waste. It does not include a facility the principal function of which is handling, treatment, or composting of manure or other solid waste not intended for disposal.
- J "Energy recovery" means the production of energy or energy resources from the handling or disposal of solid waste.
- K "Enforcement program" means the rules, regulations, and procedures adopted by MEPA to enforce this Code.
- L "Tribal Council" means the governing body of the Mescalero Apache Tribe.
- M "Handling" means collection, transportation, storage, transfer, or processing of solid waste or hazardous waste.
- N "Hazard" includes any condition, practice, or procedure that is or may be dangerous, harmful, or perilous to individuals, property, the natural environment, or the general public.
- O "Hazardous waste" means any waste substance, material, smoke, gas, particulate matter, or combination thereof that:
1. Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, composted, or disposed of;
 2. Is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorobiphenyl ("PCBs"); or
 3. is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined and regulated as such by MEPA, or the United States of America.
- P. "Implementation schedule" means a schedule that indicates approximate dates for the orderly, timely implementation of Plan policies and programs, and includes approximate dates for the establishment, expansion, and closure of any solid waste facility identified and reserved in the Plan.
- Q. "Open dump" means any facility or site at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors, and scavengers, and which is not a solid waste facility.
- R. "Operator" means the person to whom the approval to operate a solid waste facility or collection system is granted.

- S. "Permittee" means a person, including but not limited to an operator, authorized and permitted to operate a solid waste facility under this Code.
- T. "Person" means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- U. "Plan" means the Solid Waste Management Plan.
- V. "Pollution" means the condition caused by the presence in or on soil, air, or water of any solid waste, hazardous waste, or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality, appearance, or usefulness of the soil, air, or water is significantly degraded or adversely altered.
- W. "Post-closure maintenance" means all activities undertaken at a closed solid waste facility to maintain the integrity of containment features and to monitor compliance with applicable performance standards.
- X. "Processing" means the reduction, separation, recovery, treatment, or recycling of solid waste or hazardous waste.
- Y. "Proprietary information" means information relating to the ownership, management, or operation of a solid waste facility and is:
1. Solely related to internal personnel rules and practices;
 2. A trade secret;
 3. Commercial or financial information, the disclosure of which would cause substantial harm to the competitive position of the solid waste facility or its management organization; or
 4. Personnel, medical, and similar information files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- Z. "Recoverable" means the capability and likelihood of a waste or byproduct being recovered from solid waste for a commercial or industrial use.
- AA. "Recovered material" means material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from and commonly reused within an original manufacturing process.
- BB. "Recycling" means the process of sorting, cleansing, treating, and reconstituting solid waste or other discarded material in order to prepare the altered form for use.
- CC. "Removal" means the act of taking solid waste or hazardous waste from the place of generation.
- DD. "Reservation" means the Mescalero Apache Tribe.
- EE. "Recovery" means the recovery of material, byproducts, or energy from solid waste.
- FF. "Resource Recovery system" means a solid waste management system that provides for collection, separation, recycling, and recovery of solid waste, including disposal of non-recoverable waste residue.
- GG. "Sanitary landfill" means a disposal facility employing a method of disposing of solid waste on land, without creating nuisances or hazards to public health or safety, by using methods to confine the solid waste to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of suitable cover material at specific designated intervals.
- HH. "Segregated from other waste material" means any of the following:
1. The placement of recyclable materials in separate containers,

2. The binding of recyclable material separately from the other solid waste, or
 3. The physical separation of recyclable material from other solid waste.
- II. "Solid waste" means all putrescible and non-putrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid, and semisolid waste from a waste water treatment plant, water supply treatment plant, or air pollution control facility, or other discarded containerized gaseous material resulting from industrial, commercial, mining, or agricultural operations, or community activities; but not including hazardous waste; solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq.
- JJ. "Solid waste facility" means a disposal facility; a transfer/processing station; a recycling facility; a composting facility; any resource recovery system or component thereof; any system, program, or facility for resource conservation; and any facility for the handling, treatment, composting or disposal of solid waste; whether such facility is associated with facilities generating such solid waste or otherwise.
- KK. "Solid waste management" means a planned program for effectively controlling the generation, handling, treatment, Composting and disposal of solid waste in a safe, sanitary, aesthetically acceptable, and environmentally sound manner.
- LL. "Solid Waste Management Plan" or "Plan" means the comprehensive plan for solid waste handling, treatment, composting, and disposal within the Reservation, and prepared by MEPA pursuant to this Code.
- MM. "Trade secret" is a secret, commercially viable plan, formula, process, or devise that is used for making, preparing, compounding, or processing trade commodities and that can be said to be a product of either innovation or substantial effort.
- NN. "Transfer/processing station" means a facility used to receive, temporarily store, process, or transfer solid waste directly from smaller to larger vehicles for transport. "Transfer/processing station" does not include:
1. A facility the principal function of which is to receive, handle, process, treat, or compost manure in accordance with Tribal minimum standards
 2. A facility the principal function of which is to receive or handle solid waste that has already been separated for reuse and is not intended for disposal; or
 3. The operations premises of a duly licensed solid waste collection operator who handles solid waste as an activity incidental to the conduct of a refuse collection and disposal business.
- OO. "Treatment" means any method, technique, or process designed or intended to change the physical, chemical, or biological characteristics of solid waste or hazardous waste to render it less harmful to the quality of the soil, air, and water; safer to handle; or easier to contain, manage, or use as fuel, nutrient, soil amendment, or other additive.
- PP. "Tribe" means the Mescalero Apache Tribe, and "Tribal" refers to such Tribe.
- QQ. "Vector" means any insect, arthropod, rodent, or other animal capable of transmitting a pathogen from one organism to another or of disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

32A-1-6. SEVERABILITY. If any provision of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications of this Code that can be given effect without the invalid provision or application thereof, and to this end the provisions of this Code are severable.

SECTION 2. MESCALERO ENVIRONMENTAL PROTECTION OFFICE

32A-2-1. DESIGNATION AS LEAD TRIBAL AGENCY. MEPA hereby is designated to develop the Mescalero Apache Tribe policies for solid waste management; to establish, review, and modify the Mescalero Resource Recovery Program; to develop the Solid Waste Management Plan; to regulate solid waste handling, treatment, composting, and disposal within the Reservation; and to provide or cause the provision of adequate solid waste handling services, including but not limited to collection, processing, and disposal, within the Reservation. MEPA is designated as the Tribal solid waste management agency for all purposes under the Resource Conservation and Recovery Act of 1976 and any other applicable federal act heretofore and hereafter enacted.

32A-2-2. TRIBAL SOLID WASTE MANAGEMENT POLICY. MEPA shall formulate and adopt a Tribal policy for solid waste management, including but not limited to minimum standards for solid waste handling, treatment, composting, and disposal for the protection of land, air, and water from pollution, and, during the process of formulating or revising the Tribal policy for solid waste management, MEPA shall consult with and carefully evaluate the recommendations of all concerned federal, state, and local agencies.

32A-2-3. POWERS AND DUTIES. In addition to its other powers and duties, MEPA shall have the following powers and duties:

- A. Adopt and enforce regulations.
 - 1. MEPA shall adopt, amend, and enforce such regulations as are reasonably necessary to implement and carry out the policies, requirements, and duties described in this Code, and establish standards by regulations to govern the handling, treatment, composting, and disposal of solid waste and the design, construction, operation, monitoring, and monitoring after closure of solid waste facilities. MEPA may grant waivers of individual standards adopted pursuant to this Code only when MEPA has determined either:
 - a. That a hardship exists or will exist if no waiver is granted and that granting a waiver will further the Tribal policy and will relieve the hardship; or
 - b. That the operation is an experimental one designed to develop new methods or technology and that granting the waiver will significantly facilitate implementation of the Tribal policy.
 - 2. Any request for a waiver shall be accompanied by detailed information justifying the waiver and demonstrating that no significant adverse health, safety, or environmental impacts will result from the waiver. MEPA may place conditions on the waiver and shall reexamine each waiver at least annually to determine whether it should remain in force or should have more or different conditions.
- B. Solid Waste Management Plan. MEPA shall prepare and implement a comprehensive, coordinated Solid Waste Management Plan, consistent with Tribal policy, for solid waste handling, treatment, composting, and disposal within the Reservation.
- C. PROCEDURES FOR PERMIT AND INSPECTION PROGRAM. MEPA shall develop procedures for carrying out a permit and inspection program, including but not limited to requiring operators to file reports with MEPA in order to monitor solid waste handling, treatment, composting, or disposal within the Reservation.

- D. **STUDIES, INVESTIGATIONS, AND INFORMATION SYSTEMS.** MEPA may conduct Studies and investigations regarding new or improved methods of solid waste handling, treatment, composting, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems.
- E. **PUBLIC INFORMATION PROGRAM.** MEPA may implement a public information program to provide information to other governments, private industry, and the general public concerning maximum environmental protection and effective reuse of solid waste.
- F. **STUDIES OF LITTER.** MEPA may conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation, including but not limited to methods of improving public education and incentives not to litter, necessary additional legislation, and improved methods of Implementing existing litter laws.
- G. **CONTRACTS.** MEPA may enter into such contracts as MEPA deems necessary, provided that nothing MEPA does or contracts to do shall be or shall be construed to be a waiver of the sovereign rights or immunities of the Mescalero Apache Tribe, or any agency, entity, employee, or official thereof.
- H. **SPECIFICATION OF EXEMPT WASTES.** MEPA may, by regulation, specify classifications of solid waste that shall be exempt from the requirements of the Solid Waste Management Plan, provided that:
 - 1. The exemption is not contrary to the public interest;
 - 2. The quantity of exempt solid waste to be disposed of at any disposal facility is insubstantial; and
 - 3. The nature of the exempt solid waste poses no significant threat to the public health, the public safety, or the environment.
- I. **COORDINATION AND COOPERATION WITH OTHER AGENCIES.** MEPA may coordinate solid waste handling, treatment, composting, and disposal with federal, state, and local agencies and with persons in the solid waste industry; may render technical assistance to Tribal, state, and local agencies and officials thereof and others involved in the planning and operation of solid waste programs and facilities; may assist other Tribal, state, and federal agencies in the development, implementation, and maintenance of their inspection, enforcement, training, and regulatory programs; may organize, operate, and conduct any solid waste enforcement activity as it deems advisable upon the request of the governing body of any city, county, or tribe upon the appropriation for solid waste enforcement purposes by that city, county, or tribe of a sum adequate to compensate MEPA for the full cost of that activity; and may request, as necessary, any Tribal, federal, state, or local agency having jurisdiction to investigate and report on any questions or matters involved in solid waste handling, treatment, composting, and disposal affecting the Reservation.

SECTION 3. SOLID WASTE MANAGEMENT PLAN AND CONSIDERATION

32A-3-1. APPROVAL OF PLAN. The Solid Waste Management Plan, describing the location, design, operation, maintenance and ultimate reuse of solid waste facilities within the Reservation, shall be submitted for approval to the Tribal Council.

32A-3-2. CONTENTS OF PLAN. The Solid Waste Management Plan shall:

- A. Include an implementation schedule.
- B. Estimate the volume and composition of solid waste to be generated on or imported to the Reservation.

- C. Identify the responsibilities of other Tribal agencies and entities in the implementation of the Plan, the distribution of federal funds to the authorities responsible for development and implementation of the Plan, and the means for coordinating all planning and implementation under the Plan.
- D. Prohibit the disposal of solid waste in open dumps within the exterior boundaries of the Reservation, prohibit the handling, treatment, composting, or disposal of hazardous waste within the exterior boundaries of the Reservation, and contain requirements that all solid waste-including but not limited to solid waste originating off-Reservation-shall be used for resource recovery, disposed of in sanitary landfills, or otherwise disposed of in an environmentally sound manner.
- E. Provide for the closing of all existing open dumps within the Reservation pursuant to this Code and federal law.
- F. Provide for the establishment of such Tribal regulatory systems as may be necessary to implement the Plan and delineate an enforcement program.
- G. Provide that the Tribe may negotiate and enter into long-term contracts for the removal of solid waste to solid waste facilities, enter into long-term contracts for the operation of solid waste facilities, secure long-term markets for material and energy recovered from solid waste facilities, and conserve material or energy by reducing the volume of solid waste
- H. Provide for resource conservation or recovery, for disposal of solid waste in sanitary landfills, and for any combination of practices as may be necessary to handle, treat, compost, or dispose of solid waste in a manner that is environmentally sound and in compliance with MEPA rules and regulations.
- I. Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent feasible, consistent with applicable federal air quality maintenance plans, area-wide waste water treatment plans, and regional solid waste management plans.
- J. Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in 40 C.F.R-Parts 241 and 257 and 258, as such may be amended from time to time.
- K. Identify and reserve areas for the establishment or expansion of solid waste facilities.

32A-3-3. SOLID WASTE FACILITY SITES.

- A. **SITE CONSIDERATIONS.** In identifying and reserving areas for the establishment or expansion of solid waste facilities, MEPA shall insure that the land uses adjacent to or near such areas are compatible with solid waste facilities and shall consider the following:
 - 1. The varying geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality.
 - 2. Characteristics and conditions of handling, treatment, composting, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled.
 - a. Methods for closing open dumps for purposes of eliminating potential health hazards.
 - b. Population density, distribution, and projected growth.

- c. Geographic, geologic, climatic, and hydrologic characteristics.
- d. The types and locations of transportation facilities.
- e. The profiles of industries.
- f. The constituents and generation rates of solid waste.
- g. The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management.
- h. Types of resource recovery facilities and resource conservation systems that are appropriate.
- i. Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

- B. **DETERMINATION PREREQUISITE FOR RESERVATION OF SITE.** MEPA may not reserve a site for a solid waste facility without making a determination that the distance from the site to the nearest residential structure is in compliance with minimum Tribal standards for solid waste facilities and is sufficient to permit adequate control of noise, odor nuisances, traffic congestion, litter, and vectors.

32A-3-4. PERIODIC REVIEW OF PLAN. MEPA shall review and evaluate the Solid Waste Management Plan at least every three (3) years to obtain consistency with Tribal and federal policy. After such review and evaluation, MEPA shall propose appropriate amendments to the Solid Waste Management Plan for the consideration of the Tribal Council.

SECTION 4. RESOURCE RECOVERY PROGRAM

32A-4-1. POLICY AND PROGRAMS. Tribal policy is to encourage the recovery and use of all forms of energy, including but not limited to methane gas produced during the natural decomposition of solid waste at sanitary landfills, to the extent that such recovery and use is technologically and economically feasible and to encourage private sector participation in this effort. MEPA shall cause to be undertaken a study regarding the feasibility of recovering energy from sanitary landfills and shall develop the Mescalero Solid Waste Resource Recovery Program, which may include the following:

- A. **RESEARCH AND DEVELOPMENT PROGRAM.** Guidelines, criteria, procedures, and financial participation formulas for the initiation and maintenance of a research and development program jointly with public and private entities and individuals to develop technologically and economically feasible systems for the collection, reduction, separation, recovery, treatment, composting, and recycling of all solid waste, and the environmentally safe disposal of non-usable residues. Such research and development program shall be structured to ensure maximum entitlement by the Mescalero Tribe and its contractors of all matching monies available from any federal, state, or private source, and the program may include among its basic objectives pure research or the design, construction, or testing of pilot equipment and systems for the processing of solid waste.
- B. **SPECIAL STUDIES AND DEMONSTRATION PROJECTS.** Special studies and demonstration projects on the recovery of useful energy and resources from solid waste, including but not limited to the following:
 - 1. Methods of recovering resources from solid waste; recommended uses of such resources for the local, state, national, or international welfare, including but not limited to identification of potential markets for such recovered resources; and the impact of the distribution of such resources on existing markets.

2. Methods of collection, reduction, separation, and containerization to encourage the more efficient use of solid waste facilities and contribute to more effective programs for the reuse of solid waste.
3. The use of government procurement to develop market demand for recovered resources, with special emphasis on maximum possible use of recycled paper and other items.
4. Recommended incentives and disincentives to public agencies and private organizations and individuals to accelerate the reclamation and recycling of resources from solid waste.
5. The effects of existing public policies, including subsidies, economic incentives and disincentives, and tax incentives and disincentives, upon the recycling and reuse of solid waste, and the likely effects of the modification or elimination of such policies, subsidies, incentives, and disincentives upon the reuse and recycling of such resources.
6. The state of the art of energy recovery technology and the development of other energy recovery systems.
7. Sanitary landfill requirements necessary for effective energy recovery, including but not limited to landfill size, depth, liner and capping design, venting, amount of water, and composition of solid waste.
8. Methods for estimating the life of the gas resource at sanitary landfills and for determining gas production potential.
9. Capital requirements for energy recovery technology and the impact of state and federal assistance in funding.
10. Institutional arrangements.
11. Potential end uses for recovered energy sources, including but not limited to the mixture of purified gas with natural gas, direct industrial applications of low BTU gas, electrical generation from raw gas, conversion to methanol, and a comparison of the energy value and costs of each end use.
12. The role of energy recovery in solid waste management and resource recovery programs and a comparison of methane recovery with other energy and material recovery options with regard to energy potential, environmental impacts, and capital costs.
13. Recommendations on each of the following subjects, indicating where action or financial support is appropriate:
 - (a) The role of energy recovery in the program adopted by MEPA, including but not limited to priorities for funding.
 - (b) Appropriate roles for federal, state, and Tribal governments in implementing energy recovery and in providing technical assistance therefore.
 - (c) Requirements for further data analysis.
 - (d) Demonstration projects.
 - (e) Sources of funding for energy recovery projects.
 - (f) Financial incentives necessary to facilitate private sector investment in energy recovery, including but not limited to the possibility of tax credits and Tribal, state, and federal assistance in funding.
 - (g) Study of the feasibility of improving the design and engineering of sanitary landfills to enhance energy recovery.
 - (h) Legislative and executive actions necessary to implement the program.

32A-4-2. STUDY OF GAS MIGRATION.

- A. TWO YEAR STUDY. MEPA shall be responsible for ensuring that sanitary landfill operators protect the public health and safety, particularly with respect to the migration of combustible gas.

In carrying out that responsibility, MEPA shall cause to be undertaken a two-year study in order to:

1. Determine the most effective means of monitoring gas release.
 2. Develop technical specifications for gas migration control systems that would be compatible with maximum recovery of the gas for use as an energy source.
 3. Formulate standards for determining the maximum concentration of methane gas that should be allowed to migrate from sanitary landfills beyond established compliance boundaries.
 4. Develop a technical assistance strategy to help sanitary landfill operators correct deficiencies.
 5. Evaluate existing and proposed gas monitor systems.
 6. Consult with industry representatives and conduct a literature search to develop a compendium of gas control techniques.
 7. Request and review tests of new technologies at sanitary landfills that have experienced gas migration problems.
- B. **REPORTS.** MEPA shall prepare two reports on the findings made during the study conducted. One report shall be technical in nature and shall include recommended actions that sanitary landfill operators should take to minimize gas migration and maximize the protection of public health and safety at existing sanitary landfills. Another report shall include a summary of the technical findings and recommendations for legislative and administrative actions that should be taken to enhance the Tribal public health and safety objectives.

32A-4-3. DEVELOPMENT OF MARKETS.

- A. **STUDIES.** MEPA shall take, or cause to be taken by contract, such actions as may be necessary to accomplish all of the following:
1. Studies of the geographical location of existing or potential markets for recovered materials.
 2. Studies of the economic and technical barriers to the use of recovered materials.
 3. Recommendations for action to encourage the development of new uses for recovered materials.
- B. **REPORT.** A report summarizing the findings and any such actions taken and any recommendations resulting therefrom shall be transmitted to the Tribal Council within thirty (30) days of its completion.

32A-4-4. FUNDING. MEPA may seek federal, state, and other funds for activities in support of its responsibilities under this Title.

SECTION 5. PERMIT AND INSPECTION PROGRAM

32A-5-1. SOLID WASTE FACILITY AND TRANSPORTATION PERMITS.

- A. **PERMIT REQUIRED.** No person shall operate a solid waste facility within the exterior boundaries of the Reservation except as authorized by a solid waste facility permit. No person shall engage in the transportation of solid waste originating or terminating at a location within the exterior boundaries of the Reservation except as authorized by a solid waste transportation permit.
- B. **ISSUANCE OF PERMIT; CONTENTS.** MEPA may issue, modify, or revise a permit that shall contain all terms and conditions that MEPA determines to be appropriate for the operation of a

solid waste facility or for the transportation of solid waste. A Permittee must comply with all terms and conditions of the permit and/or any modifications or revisions.

- C. **CONDITIONS FOR ISSUANCE.** MEPA shall not issue, modify, or revise a solid waste facility permit or solid waste transportation permit unless it is convinced that primary consideration is given by the Permittee to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, MEPA may prohibit or condition the handling, treatment, composting, or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of the Reservation or to mitigate adverse environmental impacts. A permit will be issued only if:
1. The proposed solid waste facility or transportation operation will be in full compliance with the applicable rules and regulations in effect on the date of permit issuance;
 2. Feasible mitigation measures identified many EIS prepared pursuant to the National Environmental Policy Act, 42 U.S.C. §4321-370a ("NEPA"), have been incorporated as permit conditions; and
 3. There has been opportunity for public review and comment at relevant stages of the permitting process. MEPA may deny the permit or may impose permit conditions that will adequately protect against unreasonable defilement or degradation of the environment and natural resources of the Reservation, if MEPA determines that:
 - a. The proposed method of transportation, the place or manner in which the solid waste is to be handled, treated, composted, or disposed of, or the method or location of temporary storage will be detrimental to, or substantially damage or pollute the environment or natural resources of, the Reservation; or
 - b. The applicant is likely not to comply with permit conditions.
- D. **ADDITIONAL CONDITIONS FOR SOLID WASTE FACILITY PERMIT.** MEPA shall not issue, modify, or revise a solid waste facility permit unless the Mescalero Apache Tribe has issued a land use permit or lease authorizing the establishment of the facility. The decision to issue, modify, or revise a solid waste facility permit requires a finding by MEPA that the proposed permit is consistent with the Mescalero Solid Waste Management Plan and with the standards adopted by MEPA.
- E. **ADDITIONAL CONDITIONS FOR SOLID WASTE TRANSPORTATION PERMIT.** As a condition for the issuance of a solid waste transportation permit, MEPA shall require every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such vehicle shall be marked in a like manner with the full first name or legally registered trade name or names of the transporter and the number of the solid waste transportation permit issued pursuant to this Section. MEPA shall also require the transporter to make an annual report to MEPA, indicating the number and type of installations emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed, and such other information as MEPA may require. A renewal may be denied by MEPA for failure of the Permittee properly to report or otherwise comply with this Code.
- F. **PERIODIC REVIEW.** Any permit issued, modified, or revised hereunder shall be reviewed and, if necessary, revised by MEPA at least every year. Solid waste transportation permits may be issued for a period of up to twelve (12) months and must be renewed annually.
- G. **EXEMPTION FROM PERMIT REQUIREMENTS.** MEPA may exempt a person from these permit requirements upon a showing by such person that compliance with such requirements would create a hardship on his business activities, provided, however, that MEPA shall not grant

any exemption from requirements relating to the monitoring of environmental quality. MEPA shall promulgate guidelines specifying the circumstances under which such exemptions may be granted. Such exemptions shall be reviewed periodically as specified by MEPA but at least once every year. Any exemption granted hereunder may be revoked after notice and opportunity for hearing for a violation of any provision of this Code or other applicable laws, rules, or regulations relating to the transportation of solid waste or upon a showing that the exempted person no longer meets the guidelines for exemption.

- H. **COMPLIANCE WITH APPLICABLE LAW.** Receipt of a permit shall not relieve any person of the responsibility of operating in full compliance with any and all applicable laws, rules, or regulations.

32A-5-2. PERMIT APPLICATION; HEARING; FEES.

- A. **APPLICATION FOR PERMIT.** Any person who proposes to become an operator of a solid waste facility or a transporter of solid waste shall file with MEPA an application for a solid waste facility permit or a solid waste transportation permit, respectively, at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or transportation of solid waste. The decision to issue or not issue the permit shall be made by MEPA within 120 days of the time the application is filed.
- B. **CONTENTS OF APPLICATION.** Applications filed pursuant to this Section shall indicate the mechanical and other equipment, holding tank, vehicles, and place of temporary storage used or to be used by the applicant; a site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, compost, or dispose of the solid waste; the practices that will be employed to ensure adequate protection of the quality of ground water and surface water from leachate contamination, adequate protection of the quality of surface waters from surface runoff contamination, and adequate protection of ambient air quality; the manner in which the applicant will meet the financial assurance requirements established pursuant to this Code; a training program for employees of the solid waste facility to educate employees on environmental concerns in managing solid waste and to provide such employees with needed skills for the safe operation of the solid waste facility or transportation equipment; and such other information as MEPA deems necessary.
- C. **APPLICATION FOR REVISION OF PERMIT.** If a Permittee wishes to modify his operation, he shall file an application for revision of his existing application at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that MEPA determines present an immediate danger to public health, the 120 day filing period may be waived by MEPA. No operator of a permitted solid waste facility or transportation service shall make any significant change in the design or operation of any solid waste facility or transportation service except in conformity with the terms and conditions of the permit issued to such operator.
- D. **APPLICATION SUBMITTED UNDER OATH; FILING FEE.** Each report and application filed hereunder shall be submitted under oath and under penalty of perjury and shall be submitted in a form approved by MEPA. Each application shall be accompanied by a reasonable filing fee.
- E. **CLOSURE AND POST-CLOSURE MAINTENANCE OF SOLID WASTE FACILITIES.**
 - 1. MEPA shall adopt standards and make rules and regulations requiring that, as a condition for the issuance, modification, revision, or review of a solid waste facility permit, the operator shall provide assurance of adequate financial ability to respond to personal injury claims, public or private property damage claims, and natural resource damage claims, that may result from the operation of the solid waste facility.

2. Any person operating or intending to operate a solid waste facility within the exterior boundaries of the Reservation shall submit to MEPA a satisfactory plan for the closure and post closure maintenance of the solid waste facility prior to commencing operation of the facility. In its closure plan, such person shall submit evidence of financial ability to provide for the cost of closure and post closure maintenance in an amount equal to the estimated cost of closure and thirty years of post-closure maintenance. The evidence of financial ability shall be in the form of a trust fund into which funds shall be deposited on an annual basis in amounts sufficient to meet closure and post closure maintenance costs when needed, or an equivalent financial arrangement acceptable to MEPA. MEPA shall review and approve such evidence. Such person shall certify to MEPA that he has prepared an initial estimate of closure and post closure maintenance costs and has established a trust fund or other acceptable financial arrangement as described above; that the amounts that the operator will deposit annually in the trust fund or other acceptable financial arrangement will ensure adequate resources for closure and post closure maintenance; and that MEPA may draw upon the trust fund, in its discretion, to monitor and maintain the solid waste facility before or after closure or to take any necessary remedial or cleanup actions.
3. MEPA shall adopt regulations specifying closure plan and post closure maintenance plan adoption procedures and uniform post closure standards. MEPA shall review closure plans and post closure maintenance plans to determine their compliance with this Code and the regulations. If the plans comply with this Code and the regulations, MEPA shall approve the plans. The regulations also shall require solid waste facility operators to calculate and periodically revise cost estimates for closure and post closure maintenance for a period of not less than thirty (30) years after closure. MEPA may adopt regulations that distinguish between preliminary and final plans and provide that preliminary plans may require less specificity and engineering detail than final plans. Preliminary plans shall provide sufficient detail to enable the operator and MEPA to estimate accurately the costs for closure and post closure maintenance.
4. All documentation relating to the preparation of the closure and post closure maintenance plan shall be retained by the operator and shall be available for inspection by MEPA at all reasonable times upon request.
5. After closure and during post closure maintenance, the operator shall maintain evidence of financial ability for post closure maintenance at all times equal to the estimated costs of thirty (30) years of post-closure maintenance, except at fifteen years before the end of the post closure maintenance period specified in the post closure maintenance plan, the operator may request approval of MEPA to provide evidence of financial ability in a lesser amount.

F. Hearing on permit application.

1. No permit shall be issued except after a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the application should be granted and the conditions to be included in the permit. A hearing to determine whether a permit should be issued shall be initiated by the delivery by MEPA of a written Statement of Issues to the applicant. The Statement of Issues shall specify the laws, rules, and regulations with which the applicant shall show compliance by producing proof at the hearing and shall specify any particular facts or matters that MEPA determines would authorize a denial of the Permit. The notice of hearing shall be in the form approved by MEPA. MEPA shall hold the hearing no earlier than twenty days and no later than forty-five days from applicant's receipt of the Statement of Issues. All written notices, requests,

and statements shall be delivered personally or by certified or registered mail, return receipt requested.

2. If, after the hearing, MEPA denies a permit, or if the applicant deems the terms and conditions of the permit inappropriate, the applicant may request a rehearing in writing within fifteen days after the applicant receives notice of the denial or of the terms and conditions of the permit.

32A-5-3. INVESTIGATIONS; REPORTS; INSPECTIONS.

- A. **INVESTIGATIONS.** MEPA, in issuing or reviewing any solid waste facility permit or solid waste transportation permit or in connection with any action relating to or authorized by this Code, may investigate the construction, maintenance, and operation by any person of a solid waste facility or transportation service.
- B. **REPORTS BY OPERATORS.** In such an investigation, MEPA may require that any person who is or proposes to become an operator of a solid waste facility or transportation service within the exterior boundaries of the Reservation furnish, under penalty of perjury, such technical or monitoring program reports or other reports as MEPA may specify.
- C. **INSPECTIONS.** In such an investigation, MEPA may inspect any facility, equipment, or vehicle used for, and any records relating to, the handling, treatment, composting, or disposal of solid waste to ensure compliance herewith and to determine that operators are complying with applicable permit requirements.

32A-5-4. PROTECTION OF PROPRIETARY INFORMATION. Upon MEPA's approval of the request of any person furnishing any report, notice, application, or other document required hereby, MEPA shall not make available for inspection by the public those portions of such report, notice, application, or other document that contain proprietary information.

32A-5-5. REGULATIONS. MEPA shall make rules and regulations implementing this Chapter in order to carry out and enforce the intent and purposes thereof. Such rules and regulations shall govern permit applications, permit conditions, and permit renewals under this Chapter.

SECTION 6. ENFORCEMENT PROGRAM

32A-6-1. ENFORCEMENT AGENCY. MEPA is hereby designated as the enforcement agency entrusted with the duty and responsibility of ensuring the proper handling, treatment, composting, and disposal of solid waste on the Reservation and of ensuring compliance by all persons with this Code.

32A-6-2. DUTIES. MEPA shall:

- A. **ENFORCEMENT OF CODE.** Enforce all provisions of this Code and regulations adopted hereunder that pertain to the standards for solid waste handling, treatment, composting, and disposal, all for the protection of the public health and safety and of land, air, and water.
- B. **ENFORCEMENT OF MITIGATION MEASURES.** Enforce compliance with feasible mitigation measures identified within Environmental Impact Statements prepared pursuant to NEPA.
- C. **ENFORCEMENT BY OTHER AGENCIES.** Request enforcement by federal, state, and local agencies of their respective laws governing solid waste handling, treatment, composting, and disposal.
- D. **PROVIDE INFORMATION TO TRIBAL COUNCIL.** Provide to the Tribal Council information that the Tribal Council requests.
- E. **DEVELOPMENT OF PROGRAMS.** Develop, implement, and maintain inspection, enforcement, and training programs.

- F. RECORD KEEPING. Keep and maintain records of its inspection, enforcement, and training programs.
- G. CONSULTATION WITH HEALTH AGENCIES. Consult with appropriate health agencies concerning all actions involving solid waste handling, treatment, composting, and disposal.

32A-6-3. PERIODIC REVIEW. The Tribal Council shall periodically review MEPA and its implementation of the enforcement program. This review may include the inspection by the Tribal Council, or any person authorized by the Tribal Council, of all books, records, accounts, and other documents of MEPA. If the Tribal Council finds that MEPA is not adequately fulfilling its enforcement responsibilities, the Tribal Council shall notify MEPA of its intention to take remedial action if MEPA does not correct the problems specified by the Tribal Council.

32A-6-4. FEES AND TAXES. In order to recover operating costs, MEPA may impose reasonable fees or taxes on each operator of a solid waste facility and solid waste transportation service. The fee or tax may be based on the weight, volume, or type of solid waste received, handled, treated, composted, or disposed of by any such operator, or on any other appropriate basis or combination thereof.

Actions on complaints.

1. If MEPA receives a credible complaint concerning a solid waste facility or solid waste transporter giving rise to a reasonable suspicion that a Tribal law, regulation, or permit has been violated, MEPA shall inspect the facility or transporter to determine whether any law, regulation, or permit has been or is being violated.
2. If MEPA receives a credible complaint concerning a solid waste facility or a solid waste transporter giving rise to a reasonable suspicion that a law, regulation, or permit has been violated and determines that it is not able or authorized to take action concerning the complaint, MEPA shall refer the complaint within ten days of receipt to the Tribal, federal, or state agency that it determines is authorized to take action.
3. If MEPA receives a credible complaint concerning a solid waste facility or solid waste transporter giving rise to a reasonable suspicion that a law, regulation, or permit has been violated and MEPA does not refer it to another agency, or if MEPA receives a complaint referred to it by another agency, MEPA shall either take enforcement action concerning that facility or transporter or provide the person who filed the complaint with a written statement within thirty days explaining why an enforcement action would not be appropriate.

32A-6-5. CEASE AND DESIST ORDERS; REMEDIAL ACTIONS.

- A. CEASE AND DESIST ORDERS; REMEDIAL ACTIONS BY OPERATORS. Any person who operates a solid waste facility in violation of his solid waste facility permit; who operates such without a solid waste facility permit; who transports solid waste in violation of his solid waste transportation permit; who transports solid waste without a solid waste transportation permit; or who violates any standard adopted by MEPA for the handling, treatment, composting, or disposal of solid waste shall, upon order of MEPA, cease and desist any improper action, clean up any solid waste, abate the effects thereof, and take any other remedial action directed by MEPA. Whenever MEPA determines that the operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration of hazardous waste or solid waste or for any other reason, MEPA may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment.
- B. IMMINENT THREATS; REMEDIAL ACTIONS BY MEPA. If any of the circumstances set

forth hereinabove pose an imminent threat to life or health, MEPA may expend any available monies to perform any cleanup, abatement, and remedial work required.

- C. **REMEDIAL ACTIONS BY MEPA.** If any of the circumstances set forth hereinabove do not pose an imminent threat to life or health, but MEPA deems it necessary for the public health and safety to perform cleanup, abatement work, or remedial work, MEPA may perform such work and expend monies thereon.
- D. **REMEDIAL ACTIONS BY MEPA; CONTRACTS.** Any action taken may be taken in the absence of, or in addition to, cleanup, abatement, or remedial work by the operator or other persons. MEPA may perform the work itself or by or in cooperation with any other Tribal, state, or federal agency or private contractor. To this end and notwithstanding any other provisions of law, MEPA may enter into oral or written contracts for such work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work.
- E. **LIABILITY OF OPERATORS AND OTHER PERSONS.** If solid waste or hazardous waste is cleaned up, the effects thereof abated, or other necessary remedial action is taken as described above, the person or persons who committed or allowed the improper action shall be liable to MEPA for the reasonable costs actually incurred in cleaning up any solid waste or hazardous waste, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action in the Mescalero Apache Tribal Court, together with the costs of suit incurred by MEPA in recovering such monies. A judgment ordering the payment of these costs to MEPA will bear interest at the rate of fifteen percent (15%) a year or at the rate of interest allowable on judgments under New Mexico law, whichever is greater-MEPA shall reimburse the Tribe to the extent of the latter's contribution.

32A-6-6. COMPLIANCE SCHEDULE. MEPA shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates MEPA's minimum standards. The compliance schedule shall assure that diligent progress shall be made to bring the solid waste facility or solid waste transporter into compliance with MEPA's minimum standards within a specific period of time determined by MEPA. If the solid waste facility or solid waste transporter is not in compliance within the period specified, MEPA may revoke, suspend, or modify the permit until such time as violations of the minimum standards are remedied.

32A-6-7. REVOCATION, SUSPENSION OR MODIFICATION OF PERMIT.

- A. **GROUND FORS SUSPENSION, REVOCATION, OR MODIFICATION.** After a hearing, any permit may be suspended, modified, or revoked by MEPA for cause, including but not limited to any or all of the following:
 - 1. Any violation of any term or condition contained in the permit, this Code or regulations promulgated hereunder, or the underlying lease or land use permit.
 - 2. Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts.
 - 3. A change in any condition that requires either a temporary or permanent modification, reduction, or elimination of the permitted operation to bring it into compliance with the terms or conditions of the permit, this Code or regulations promulgated hereunder, or the underlying lease or land use permit.
- B. **ISSUANCE OF DECISION.** Within thirty days after the case is submitted for decision, the hearing panel shall issue its decision. Cases shall be decided by concurrence of at least two members of the panel. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the assessment of costs and penalties, if any. Copies of the decision shall be sent to all parties and to the Chairman of the Tribal Council.

- C. **REDUCTION OF PENALTY OR REINSTATEMENT.** A person whose permit has been revoked or suspended by MEPA may petition MEPA for reinstatement after a period of not less than one year has elapsed from the effective date of the revocation or suspension or from the date of the denial of a similar previous petition. If MEPA declines to take the action requested, the petitioner, if he so requests, shall be afforded a hearing.

32A-6-8. CIVIL PENALTIES.

- A. **CIVIL PENALTIES FOR VIOLATIONS.** Any person who engages in the unauthorized handling, treatment, composting, or disposal of solid waste or hazardous waste within the exterior boundaries of the Reservation; who operates a solid waste facility in violation of his solid waste facility permit; who operates without a solid waste facility permit or a solid waste transportation permit; who transports solid waste in violation of his solid waste transportation permit; or who violates any standard adopted by MEPA for the handling, treatment, composting, or disposal of solid waste shall be liable for a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day such violation or operation occurs, to be assessed by the Mescalero Apache Tribal Court in an action filed by MEPA after an opportunity to be heard. Any person who commits any of the above prohibited acts may be subject to criminal penalties and also be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation. Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.
- B. **DISPOSITION OF CIVIL PENALTY FUNDS.** Civil penalty funds collected shall be paid one-half (1/2) to MEPA and one-half (1/2) to the Mescalero Apache Tribe. Penalty funds paid to MEPA shall be retained in a fund designated for meeting the costs of responses to environmental emergencies on the Reservation.
- C. **PENALTIES IN ADDITION TO OTHERS.** Penalties under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal. In any civil action brought pursuant to this Code in which injunctive relief is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the injunctive relief not be issued, or that the remedy at law is inadequate, and any form of injunctive relief shall issue without such allegations and without such proof.

CHAPTER 32B

WATER QUALITY STANDARDS

SECTION 1. GENERAL PROVISIONS.

32B-1-1. PURPOSES.

- A. The establishment of water quality standards is crucial to preserve and enhance the social, cultural, physical and economic well-being of the Mescalero Apache Tribe. In addition, the Tribe is responsible for ensuring that the objectives of the federal Clean Water Act are fulfilled within the exterior boundaries of the Reservation (“on the Reservation”).
- B. Therefore, the Tribe has established the Mescalero Apache Water Quality Standards (the “Water Quality Standards” or “Standards”). These Standards shall ensure that a certain level of water quality is restored and/or maintained.
- C. These Water Quality Standards shall:
 - 1. Designate Existing Uses and ensure maintenance of a minimum water quality to allow for the continuation of those uses into the future;
 - 2. Designate uses for water bodies that require more stringent criteria than the Existing Uses, if the Tribe so determines that such a use occurs or will be pursued at some time in the future;
 - 3. Provide numeric and narrative water quality standards to ensure protection of Designated Uses for surface waters;
 - 4. Ensure existing water quality is not degraded by providing an anti-degradation policy for surface waters; and
 - 5. Allow the Tribe to control the determination of Designated Uses and associated standards for Tribal benefit, and in accordance with Tribal traditions, ceremonies and practices.
- D. Attainment of the criteria laid out in these Standards shall be achieved by permitting point discharges and by applying best management practices, as defined herein, to manage non-point source pollution.
- E. Water quality monitoring will record the state of water within the exterior boundaries of the Reservation (“Reservation waters”) and alert the Tribe to any infraction of the Water Quality Standards.
- F. When a water body fails to meet the required water quality criteria, the Tribe shall respond by attempting to ascertain the pollution source, and then mitigating the influx of pollutants to the water body to a level where water quality will again, at a minimum, meet the Designated Use.

32B-1-2. DEFINITIONS. The definitions provided herein shall be used to interpret the meaning of the language provided in these Water Quality Standards and any documents or regulations referred to herein:

- A. “Acute and Chronic Ammonia Criteria” means those criteria developed by the Water Quality Program and approved by the Tribal Council for use with these Standards. Upon approval, such criteria shall become a part of this Code and carry the weight of law.
- B. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a response in ninety-six (96) hours or less. Acute toxicity is not always measured in terms of lethality, but may include other toxic effects that occur within a short time period.
- C. “Acute Toxicity Aquatic Life Criteria” means the Criterion Maximum Concentration’s to be used

in the implementation of these Water Quality Standards and developed by the Water Quality Program and approved by the Tribal Council. Upon approval, such Criteria shall become a part of this Code and carry the weight of law.

- D. “Best Management Practices” or “BMPs” means activities, practices or procedures that help contribute to the protection or improvement of the condition of a water body. For example, a water body may be negatively affected if activities are carried out without regard for controlling sources of water pollutants. Therefore, the BMP is to consider controlling sources of water pollutants. These Standards state specific BMP’s that are to be developed. Any additional BMPs deemed necessary by the Water Quality Program shall be developed and approved the Tribal Council on a case by case basis.
- E. “Bioaccumulation” means the uptake and retention of a substance by an organism from its surrounding medium and food.
- F. “Bioconcentration Factor” or “BCF” means the ratio of a substance’s concentration in tissue versus its concentration in water, in situations where the food chain is not exposed or contaminated.
- G. “Biomagnification” means the process by which the concentration of a compound increases in species occupying successive trophic levels.
- H. “Biomonitoring” means use of living organisms to test the suitability of effluents for discharge into receiving waters or to test the quality of surface waters by use of biological entities.
- I. “Calculated geometric mean LC-50 value” or “LC-50” means an estimate of the toxicant concentration that would be lethal to fifty percent (50%) of the trial organisms during a specified time period.
- J. “Chronic toxicity” means toxicity resulting from the effects of a pollutant over the long term or lifespan of an organism. Such chronic effects include, but are not limited to: lethality, growth impairment, behavioral modifications, disease and reduced reproduction.
- K. “Chronic Toxicity Aquatic Life Criteria” means the Criterion Continuous Concentration’s to be used in the implementation of these Water Quality Standards and developed by the Water Quality Program and approved by the Tribal Council. Upon approval, such Criteria shall become a part of this Code and carry the weight of law.
- L. “Clean Water Act” or “CWA” means the federal act, 33 U.S.C. § 1341, governing water pollution prevention and control of surface waters within the exterior boundaries of the United States.
- M. “Cold water aquatic life” means surface water with a water temperature and other characteristics suitable for the support, propagation or both of cold-water aquatic life.
- N. “Criterion Continuous Concentration” or “CCC” means the estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect.
- O. “Criterion Maximum Concentration” or “CMC” means the estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed briefly without resulting in an unacceptable effect.
- P. “Criteria” means those elements of the Water Quality Standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a certain use. When criteria are met, water quality will generally protect the designated use.
- Q. “High quality cold water aquatic life” means perennial surface water in a minimally disturbed condition with considerable aesthetic value and superior cold-water aquatic life habitat. Such

surface waters have water quality, stream bed characteristics and other attributes of habitat sufficient to protect and maintain a propagating cold-water aquatic life population.

- R. “Designated Use” means the use for which a water body is intended, whether or not the quality of the water is sufficient to support such use at the present time.
- S. “Dissolved” means that state where constituents are in solution in water and will pass through a 0.45 micrometer pore-sized membrane filter under a pressure differential not exceeding one atmosphere. The “dissolved fraction” is also known as the “filterable residue.”
- T. “E. coli” or “Escherichia coli” means a gram-negative rod-like bacteria forming acid and gas in the presence of carbohydrates and found in the intestines of humans and most warm-blooded animals.
- U. “Ephemeral” means water that is flowing only in response to rainfall or snowmelt.
- V. “Existing Use” means any use of a water body occurring on or after November 28, 1975, whether or not that use still exists, and regardless of whether existing water quality is sufficient to enable that use of the water body.
- W. “Fecal coliform bacteria” means those bacteria that live in the gut and/or feces of warm-blooded animals and generally, including organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at $44.5 \pm 2^\circ\text{C}$.
- X. “Flow” means natural flow of water in a stream channel from a natural source, for example: groundwater, springs, wetlands, or precipitation. “Low flow,” “critical low flow,” “harmonic mean flow” and “modified harmonic mean flow” are related and mean, respectively:
 1. A “critical low flow” condition for streams is that level below which numeric criteria no longer apply, although narrative criteria still apply. The impacts of permitted discharges are analyzed at critical low flow. The critical low flow of a stream at a particular site shall be the most stringent numerical criteria applicable, being either the seven-day-ten year low flow value, or the harmonic mean flow.
 2. The “seven-day-ten year low flow value” or “7Q10 flow measurement” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years as determined with hydrological data.
 3. The “harmonic mean” is a calculation of the number of daily flow measurements divided by the sum of the reciprocals of the flow values. That is, it is the reciprocal of the mean of reciprocals. Harmonic mean is expressed as the following mathematical equation:

$$H.M. = \frac{n}{\frac{1}{a_1} + \frac{1}{a_2} + \dots + \frac{1}{a_n}}$$

where n equals the number of flow measurements and a_1, \dots, a_n equals individual flow values.

4. The “modified harmonic mean” is used for ephemeral waters, based on the nonzero flow intervals and modified by an adjustment factor for the proportion of intervals with zero flow. Modified harmonic mean is expressed as the following mathematical equation:

$$\text{Modified H.M.} = \left[\frac{\sum_{i=1}^{Nt-No} \frac{1}{Qi}}{Nt - No} \right]^{-1} \times \left[\frac{Nt - No}{Nt} \right]$$

where Qi equals nonzero flow; Nt equals the total number of flow values; and No = number of zero flow values.

- Y. “Great Lakes Initiative” or “GLI” means that initiative embodied in federal regulation 40 CFR Part 132.
- Z. “Intermittent” means those waters that migrate from above surface to below surface or vice versa. Intermittent flow can appear and disappear along an entire channel length or only part of a channel length.
- AA. “Irrigation” means the transport and supply of water to a dry area to nurture crops.
- BB. “Livestock watering” means the use of surface water for the purpose of providing water to livestock.
- CC. “Micrograms per liter” or “ $\mu\text{g/L}$ ” means the micrograms of solute per liter of solution and is equivalent to parts per billion when the specific gravity of the solution is equal to one (= 1.000).
- DD. “Milligrams per liter” or “ mg/L ” means the milligrams of solute per liter of solution and is equivalent to parts per million when the specific gravity of the solution is equal to one (= 1.000).
- EE. “Minimum quantification level” means the minimum quantification level for a constituent determined by official published documents of the United States Environmental Protection Agency (“U.S. EPA”).
- FF. “Mixing zone” means that zone described herein at Section 32B-2-7.
- GG. “Natural cause” means a cause resulting specifically and solely from a non-human caused or non-human related event. For example, where landslides from heavy snow pack contribute large amounts of sediment into a stream, the resulting pollution of the stream had a natural cause. In contrast, a landslide resulting from heavy snow pack on a previously human altered landscape does not have a natural cause. Logging, mining and heavy recreation uses are not natural causes.
- HH. “Navigable waters” means those waters defined by federal regulation and case law and generally described as being presently used, or having been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- II. “Non-point source pollution” means any pollution that degrades the quality or adversely affects the biological, chemical, or physical integrity of surface water that can neither be traced to one discharge point nor regulated as a point source discharge
- JJ. “Nephelometric turbidity units” or “NTU’s” means those units based on a standards method using formazin polymer or its equivalent as the standards reference suspension. Nephelometric turbidity measurements expressed in units of NTU are numerically identical to the same measurements expressed in units of formazin turbidity units (“FTU”).
- KK. “Perennial” means flow which exists throughout the year in a channel sufficient to be visible.
- LL. “pH” means the measure of the acidity or basicity of a solution.
- MM. “Point source” means a discernible, confined and discrete conveyance from which pollutants are or may be discharged into a surface water.

- NN. “Primary contact” means:
1. Prolonged intimate contact with surface water, such as swimming, water skiing and wading, that involves considerable risk of ingesting water in quantities sufficient to pose a significant health hazard; or
 2. Any use of surface waters for traditional cultural, religious, or ceremonial purposes in which there is intimate contact with the water, involving considerable risk, sufficient to pose a significant health risk.
 3. The contact may include but is not limited to ingestion or immersion.
- OO. “Quantification limit” or “ql” means the concentration of analyte in a specific matrix for which the probability of producing analytical values above the method detection limit is ninety-nine percent (99%).
- PP. “Reference dose” or “rfd” means the estimate of a daily exposure to the human population that is likely to be without an appreciable risk of deleterious effects during a lifetime, generally expressed in milligrams per kilogram (“mg/kg”) of bodyweight/day (“mg/kg/day”).
- QQ. “Secondary contact” means any recreational or other water use in which contact with the water may occur and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, boating and any limited seasonal contact including seasonal field work.
- RR. “Section 401 certification” or “§ 401 certification” means that federal application, certification and licensing process required under the Clean Water Act for any construction or operation of facilities which may result in a discharge to navigable waters, whether such waters are within the exterior boundaries of the Reservation or not.
- SS. “Surface Waters” means all waters that are perennial streams, lakes, wetlands and perennial springs.
- TT. “Toxic pollutant” means those pollutants, or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral malfunctions or physical deformation in such organisms or their offspring.
- UU. “Unclassified Waters” means those waters that are not otherwise classified and includes intermittent and ephemeral waters and other perennial water bodies.
- VV. “Water pollutant” means a water contaminant present in such quantity and of such duration as may with reasonable probability injure human, animal or plant life or property, or to unreasonably interfere with public welfare or use of property.
- WW. “Wetlands” means those areas inundated or saturated by surface or ground water at a frequency and of duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. “Constructed” wetlands used for wastewater treatment purposes are not included in this definition.

32B-1-3. SCOPE. These Standards shall:

- A. Apply to all surface waters located wholly or partially within and abutting the exterior boundaries of the Mescalero Apache Indian Reservation (“Reservation waters”).
- B. Apply to substances attributable to discharges, nonpoint sources or instream activities.
- C. Not apply to natural phenomena. These Water Quality Standards shall regulate human behavior, not changes in water quality caused by natural causes, and are meant to influence positive

changes in human land use and management.

- D. Not apply to certain waters that are neither situated in the original location of a surface water body nor the result of impoundment of surface water and including:
 - 1. Man-made bodies of water; and
 - 2. Wastewater treatment reservoirs or treatment systems, including ponds, lagoons, and constructed wetlands that are a part of such systems.
- E. Apply to discharges from wastewater treatment reservoirs or treatment systems into other Reservation waters.
- F. These Standards are not intended to interfere in any way with traditional or religious uses of Reservation waters.

32B-1-4. ANTIDegradation Policy.

- A. Where the quality of Reservation waters exceeds levels necessary to support the Designated Use or Existing Use of the water body, that level of water quality shall be maintained and protected.
- B. However, where the Tribe determines after full satisfaction of governmental and public participation requirements that a lower level of water quality must be allowed to accommodate important economic or social development.
- C. In allowing such degradation of surface water quality, the Tribe shall seek to ensure water quality adequate to fully protect Existing Uses while imposing the highest statutory and regulatory requirements for point sources and implementation of effectual Best Management Practices for nonpoint sources.
- D. However, where high quality surface waters constitute an “Outstanding Tribal Water Resource,” as defined herein at Section 32B-6-3, the surface water quality and uses of those water bodies shall be fully maintained and protected.
- E. In those cases where potential water quality impairments associated with thermal discharge are involved, these Water Quality Standards shall be considered to be consistent with the federal Clean Water Act.

32B-1-5. WATER QUALITY PROGRAM. The Water Quality Program shall be administered by the Division of Resource Protection and Management (“DRMP”). DRMP shall be responsible for implementation of these Water Quality Standards.

32B-1-6. IMPLEMENTATION PLAN. The Water Quality Program shall:

- A. Monitor chemical, physical, and biological water quality to assess the effectiveness of pollution controls and to determine whether the Water Quality Standards criteria are being attained;
- B. Conduct water quality impact assessments for discharges into waters, or other activities that may affect a water body of any kind including activities in and around springs, along perennial and intermittent streams; groundwater recharge zones; well developments; stock pond developments; housing placement and other similar activities;
- C. Review adequacy of existing databases and obtain additional data when required;
- D. Advise prospective dischargers of discharge requirements; specifically, provide notice that monitoring may be required in the Tribal or federal §401 permitting process;
- E. Develop water quality-based effluent limitations and comments on technology-based effluent limitations as appropriate, for inclusion in any federal permit issued to a discharger pursuant to § 402 of the Clean Water Act and require that these effluent limitations be included in any permit

or license as a condition for the issuance of Tribal permits pursuant to § 401 of the Clean Water Act;

- F. Prioritize waters for water quality improvement based on water quality data;
- G. Coordinate water pollution control activities with other Tribal entities and with local, state and federal agencies, as appropriate and as desired by the Tribe;
- H. Coordinate with the Tribal Utility Department to require the highest and best degree of wastewater treatment practicable to protect and maintain Designated Uses and existing water quality consistent with long-term environmental protection objectives;
- I. To achieve compliance with the Standards and in conjunction with other Tribal entities, encourage voluntary implementation of Best Management Practices to control nonpoint sources of pollutants;
- J. Evaluate effectiveness of Best Management Practices that have been implemented to prevent or abate nonpoint sources of pollutants;
- K. Recommend Best Management Practices and policies consistent with these Standards to the Tribal Council for final approval and make such Practices and policies available to appropriate Tribal Departments;
- L. Determine whether instream flows are sufficient to meet the narrative and numeric Water Quality Standards criteria specified herein;
- M. Require that surface water and groundwater withdrawals not cause impairment of surface water or groundwater bodies;
- N. Ensure that groundwater withdrawals do not occur in quantities that will cause degradation of springs or riparian habitat;
- O. Provide technical support as necessary to accomplish the objectives of these Water Quality Standards; and
- P. Develop procedures for assessing “Use Attainment” as described herein at Section 32B-3-15.

SECTION 2. GENERAL STANDARDS.

32B-2-1. INTRODUCTION.

- A. The following General Standards are mostly narrative and designed to support recreation and the propagation of fish.
- B. These General Standards shall be applicable to all Reservation surface waters at all times unless:
 - 1. Stricter or additional standards are imposed because a water body has been designated as having a specific Existing or Designated Use which has more stringent criteria, then, the more stringent criteria shall apply; and
 - 2. If any of the following characteristics are affected by natural causes, then the respective numeric criteria for that characteristic listed herein shall not apply:
 - a. Dissolved oxygen,
 - b. Temperature,
 - c. Dissolved solids,
 - d. Sediment, or
 - e. Turbidity.

32B-2-2. AQUATIC LIFE. Fish and benthic macroinvertebrate communities shall not be reduced in diversity beyond the normal and expected levels that result from seasonal or other changes.

32B-2-3. BOTTOM DEPOSITS. Reservation waters shall be free from water contaminants that may settle and damage or impair the normal growth, function, or reproduction of aquatic life, or significantly alter the physical or chemical properties of the bottom.

32B-2-4. COLOR. Color-producing materials shall neither create an aesthetically undesirable condition of Reservation waters, nor impair use by desirable aquatic life, nor interfere with any designated use.

32B-2-5. DISSOLVED OXYGEN. If a stream or lake is capable of supporting aquatic biota, the dissolved oxygen standard shall be a minimum of five (5) mg/L.

32B-2-6. FLOATING SOLIDS, OIL AND GREASE. Surface waters shall be free of oils, scum, grease and other floating material that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.

32B-2-7. MIXING ZONES.

- A. Mixing zones are regions of initial dilution that allow the application of a dilution factor in calculations of effluent limitation.
- B. A limited mixing zone, contiguous to a point source wastewater discharge, may be allowed in any stream receiving such a discharge.
- C. Effluent limitations shall be developed which will protect the most sensitive Existing, Designated or Attainable Use of the receiving water.
- D. The criteria for Designated Use of Aquatic Life, Drinking Water or Public Water Supply, developed as provided herein, shall apply to any discharge into waters with the respective Designated Use.
- E. Temperature, pH, salinity, turbidity, radioactivity and pathogenic General Standards apply to the area immediately adjacent to the mixing zone; the extent of the area immediately adjacent shall be determined on a case-by-case basis by the Water Quality Program.
- F. Aquatic life in the mixing zone shall not be lower in number or diversity than in upstream or downstream reaches with similar characteristics.

32B-2-8. PLANT NUTRIENTS AND NUISANCE CONDITIONS.

- A. Plant nutrients or other substances stimulating algal growth, or growth of excessive rooted vegetation from other than natural causes shall not be present in concentrations that:
 - 1. Produce objectionable algal densities or nuisance aquatic vegetation;
 - 2. Result in a dominance of nuisance species instream; or
 - 3. Cause nuisance conditions in any other fashion.
- B. Plant nutrient concentrations shall not be permitted to reach levels that result in human-induced eutrophication problems.
- C. If nuisance conditions resulting from plant nutrients are identified in Reservation waters, limitations for such nutrients shall be developed by the Water Quality Program for Tribal Council approval and shall incorporate the most recent recommendations of the U.S. E.P.A. for such limitations. Upon approval, such limitations on nutrients shall become a part of this Code and carry the weight of law.

32B-2-9. ODOR AND TASTE.

- A. Water contaminants from other than natural causes shall be limited to concentrations that do not impart unpalatable flavors to fish or result in offensive odors.
- B. Taste and odor-producing substances from other than natural origins shall not interfere with the production of a potable water supply by modern treatment methods.

32B-2-10. PATHOGENS. Reservation waters shall be virtually free of pathogens.

32B-2-11. pH. pH attributable to other than natural causes shall not reduce the function or diversity of plant and aquatic community assemblages, as determined from biological surveys.

32B-2-12. RADIOACTIVITY. Radioactivity of Reservation waters shall be maintained at the lowest practical level.

32B-2-13. TEMPERATURE.

- A. Introduction of heat by other than natural causes shall not increase the temperature, as measured from above the point of introduction, by more than 2.70°C (5.72°F) in a stream, or more than 1.7°C (3.60°F) in a lake or reservoir.
- B. In no case shall the introduction of heat be permitted when the maximum temperature specified for the reach would thereby be exceeded.
- C. These temperature standards shall not apply to impoundments constructed off stream for the purpose of heat disposal.
- D. High water temperature resulting from unusually high ambient air temperature is not a violation of these Standards.

32B-2-14. TOXIC POLLUTANTS.

- A. Reservation waters shall be free from toxic pollutants in amounts, concentrations or combinations which:
 - 1. Affect the propagation of fish;
 - 2. Are toxic to fish or other aquatic organisms, livestock or other animals; or
 - 3. Are toxic to wildlife using aquatic environments for habitation or aquatic organisms for food.
- B. The Standards limiting toxic pollutants in accordance with the type of water body and/or Designated or Existing Use shall be set forth in a table that incorporates U.S. E.P.A. published criteria for toxic substances and is developed by the Water Quality Program and approved by the Tribal Council. Upon approval, such table shall become a part of this Code and carry the weight of law.
- C. For toxic substances lacking U.S. E.P.A. published criteria, biomonitoring data may be used to determine compliance with this narrative standard in accordance with U.S. E.P.A. standard acute and chronic biological test protocols.
- D. Where the Tribe finds it necessary to derive such criteria for toxic substances without conducting toxicity tests, then the Tribe shall use the Aquatic Toxicity Information Retrieval (“AQUIRE”) and the U.S. E.P.A. approved and published guidelines for calculating any criteria.
- E. In the event that sufficient data is not available to derive a numeric criterion, the Tribe may use the results of toxicological studies to calculate a criterion based on the following methods:
 - 1. A geometric mean LC-50 value that uses the results of toxicological studies published in scientific journals:

- a. A geometric mean LC-50 value shall be calculated for the particular species, genus or group which is representative of the form of life to be preserved.
 - b. The chronic standard for a toxic pollutant which bioaccumulates shall be that value, adjusted by a bioaccumulation factor for the particular species, genus or group representative of the particular form of life to be preserved.
 - c. The chronic standard for a toxic pollutant which does not bioaccumulate shall be 10% of the calculated geometric mean LC-50 value.
 - d. When such definitive information has not been published, the chronic standards for a bioaccumulating toxic pollutant shall be 1% of the calculated geometric mean LC-50 value.
2. Toxic pollutants in receiving waters that are known to be persistent bioaccumulative, carcinogenic, and/or synergistic with other waste stream components, shall be addressed on a case-by-case basis.

32B-2-15. TURBIDITY. Turbidity attributable to other than natural causes shall not reduce light transmission to the point that:

- A. The normal growth, function, or reproduction of aquatic life is impaired; or
- B. There is substantial visible impairment of the natural appearance of the water.

32B-2-16. SALINITY. Salinity shall not be increased from other than natural causes to the point that:

- A. The normal growth, functions, or reproduction of aquatic life is impaired; or
- B. There are substantial organoleptic effects to an observer.

32B-2-17. ADDITIONAL CRITERIA WHERE CERTAIN SURFACE WATERS. For Reservation waters, including unclassified perennial water bodies, unclassified intermittent water bodies, and water bodies with Designated Uses, the criteria in the following Section shall apply.

SECTION 3. DESIGNATED USES

32B-3-1. GENERALLY.

- A. The Designated Uses provided herein represent the minimal standards required for Existing Uses.
- B. No Designated Use can be assigned to a water body where that use would allow water quality to fall below the standard required to protect an Existing Use.
- C. If the water quality of a water body improves enough to meet the criteria required by a more stringent Designated Use, a new Designated Use can be assigned to reflect the positive change in water quality.

32B-3-2. TRIENNIAL DESIGNATED USES LISTING.

- A. The Tribal Council shall enact, via Tribal Ordinance, at least triennially, a “Designated Uses Listing.”
- B. The Designated Uses Listing shall include each known water body on the Reservation and its Designated Use.
- C. Such Designated Uses Listing shall become a part of this Code and carry the weight of law.
- D. In the event the Tribal Council fails to enact the Designated Uses Listing in any year, the Listing from the preceding year shall remain in full force and effect as if renewed.

32B-3-3. PERENNIAL SPRINGS IN CERTAIN CIRCUMSTANCES.

- A. Where the discharge of a perennial spring is five (5) liters per minute or greater, the criteria associated with the Designated Use of the spring shall apply.
- B. During the time that the discharge of a perennial spring is less than 5 liters per minute, only the General Standards criteria listed above shall apply.
- C. However, Designated Use criteria applies even where the discharge is minimal, where the use continues for ceremonial or other reason, or has the potential to continue.

32B-3-4. UNCLASSIFIED WATER BODIES. Unclassified Water Bodies shall have the presumed use and shall be subject to the Designated Use criteria of Secondary Contact and of Wildlife.

32B-3-5. AGRICULTURAL USE. Waters used for agricultural crops, whether commercial crops or crops for domestic use, shall be subject to the General Standards.

32B-3-6. AQUATIC LIFE.

- A. Reservation waters with a Designated, Existing or Attainable Use of Aquatic Life shall be free from any substances at concentrations that could impair the community of plants and animals in, or the ecological integrity of the waters.
- B. In addition, the specific criteria for aquatic life subcategories shall apply as follows:
 - 1. High Quality Cold Water Aquatic Life criteria shall include the following:
 - a. Dissolved oxygen minimum of 6.0 mg/L;
 - b. Temperature maximum of 20°C (68°F);
 - c. pH range of 6.6-8.8;
 - d. Turbidity not to exceed 25 NTU where no storm or large runoff events;
 - e. Conductivity limit varying between 300 to 1500 microsiemens/cm depending on the natural background in particular surface waters; and
 - f. Acute and Chronic Ammonia Criteria adopted pursuant to these Standards.
 - 2. Cold Water Aquatic Life criteria shall include the following:
 - a. Dissolved oxygen minimum of 6.0 mg/L;
 - b. Temperature maximum of 20°C, 68°F;
 - c. pH range of 6.6-8.8;
 - d. Turbidity not to exceed 25 NTU, without storm or large runoff events; and
 - e. Acute and Chronic Ammonia Criteria adopted pursuant to these Standards

32B-3-7. DRINKING WATER. Where a water body is used for drinking by the public at any time, by individuals in passing or when in the field or as part of ceremonial observations the numeric standards of Public Water Supply Use apply.

32B-3-8. FISH CULTURE. Where a water body has a Fish Culture Use, production of cold-water fish in a hatchery, the General Standards shall apply.

32B-3-9. LIVESTOCK. Where waters are used for livestock watering the General Standards shall apply.

32B-3-10. PRIMARY CONTACT.

- A. Primary Contact Use involves any use of a water body for recreation including swimming, wading or bathing, and any Mescalero Apache traditional, cultural, religious, or ceremonial purpose in which there is intimate contact with the water body that may pose a significant health

risk and specifically includes:

1. Any use that involves either direct or potential ingestion, and includes immersion but is not limited to ingestion or immersion; and/or
2. Any use that may result in intentional or unintentional immersion, partial or wholly, or ingestion of water.

B. Where there is a Primary Contact Use:

1. The monthly geometric mean of *Escherichia coli* ("E. coli") bacteria shall be 126 cfu/100 ml or less;
2. No single sample shall exceed 235 cfu/100 ml; and
3. pH shall be within the range of 6.6-9.0.

32B-3-11. PUBLIC WATER SUPPLY.

- A. Public Water Supply Use applies to any water body used as a public water supply source for distribution in a public drinking water infrastructure.
- B. In addition, this designation is applicable to upstream waters when the downstream waters are used for public water supply on or off the Reservation.
- C. Where there is a Public Water Supply Use, the water shall not contain substances in concentration that create lifetime cancer risk of more than one cancer per 100,000 exposed persons.
- D. In addition, where Public Water Supply Use, the following numeric standards shall not be exceeded where the respective substance is present:

1. Dissolved antimony: 0.006 mg/L;
2. Dissolved arsenic: 0.01 mg/L;
3. Dissolved barium: 2.0 mg/L;
4. Dissolved beryllium: 0.004 mg/L;
5. Dissolved cadmium: 0.005 mg/L;
6. Dissolved chromium: 0.1 mg/L;
7. Dissolved cyanide: 0.2 mg/L;
8. Dissolved lead: 0.05 mg/L;
9. Total mercury: 0.002 mg/L;
10. Dissolved nickel: 0.1 mg/L;
11. Total nitrate as N: 10.0 mg/L;
12. Dissolved selenium: 0.05 mg/L;
13. Dissolved thallium: 0.002 mg/L;
14. Dissolved uranium: 0.03 mg/L;
15. Radium-226 + radium-228: 5.0 pCi/L;
16. Strontium-90: 8 pCi/L;
17. Tritium: 20,000 pCi/L; and
18. Gross alpha: 15 pCi/L (including radium-226, but excluding radon,

uranium)

32B-3-12. SECOND CONTACT.

- A. Second Contact Use applies to any water body used for activities that may involve partial body contact with the water, but where potential for ingestion of water is minimal such. Examples of Second Contact Use includes: activities like fishing, bird watching, hunting, stream crossing, walking through wetlands, or other similar activity.
- B. Where there is Second Contact Use, the monthly geometric mean of E. coli bacteria shall be 126 cfu/100 ml or less, and no single sample shall exceed 235 cfu/100 ml.

32B-3-13. WILDLIFE.

- A. Wildlife Use applies to waters used by wildlife for drinking or other activities which require water. Wildlife includes ungulates, wild horses, bears, wildcats and game birds-like wild turkeys.
- B. Where there is a Wildlife Use, the following numeric standards shall not be exceeded where the respective substance is present:
 - 1. Dissolved mercury: 0.012 µg/L at the maximum;
 - 2. Total recoverable selenium: 5.0 µg/L at the maximum,
 - 3. PCBs: 0.014 µg/L at the maximum; and
 - 4. 4,4'-DDT and derivatives: 0.001 µg/L at the maximum.

32B-3-14. MOST STRINGENT HUMAN HEALTH CRITERIA VERSUS DESIGNATED USE.

- A. The Most Stringent Human Health Criteria applicable to any stream shall be maintained whenever flow equals or exceeds the critical design flow, being either the seven (7) day, ten (10) year low flow value, 7Q10, or the harmonic mean flow.
- B. When streams have a flow of zero, all discharges to the dry channel shall meet the Standards for the Designated Use.
- C. For standing water bodies, Standards particular to a Designated Use shall be maintained whenever the water quantity is suitable for the use.

32B-3-15. USE ATTAINABILITY ANALYSIS AND MODIFICATION OF STANDARDS.

- A. In the event that water quality monitoring identifies areas where attainable water quality is less than that which is required by the Standards, the Tribe may modify the Standards to reflect such level of attainability.
- B. The following circumstances may prevent attainment of a Designated Use:
 - 1. Naturally occurring pollutant concentrations;
 - 2. Natural, ephemeral, intermittent or low flow conditions;
 - 3. Human caused conditions or sources of pollution that cannot be remedied or would cause more environmental damage to correct than to leave in place;
 - 4. Dams, diversions or other types of hydrologic modifications where it would not be feasible to restore the original condition;
 - 5. Physical conditions related to natural features of the water body such as lack of proper substrate, cover, flow, depth, pools and the like, unrelated to water quality; or
 - 6. Substantial and widespread economic and social impact would result.

- C. Modifications under this Section shall be carried out in accordance with use-attainability analysis procedures or developed site-specific criterion.

SECTION 4. PERMITS, MONITORING, AND ANALYSIS

32B-4-1. POINT DISCHARGES AND PERMITS.

- A. These Standards shall be the criteria by which permits for point source discharges into navigable waters, which are regulated by the U.S. E.P.A. through the National Pollutant Discharge Elimination System (“NPDES”), and permits issued under §404 by the U.S. Army Corps of Engineers.
- B. The Tribe shall review requests for “§401 certification” for all proposed federal licenses or for activities within the Reservation which may result in a discharge.
- C. As the Tribe develops capability, the Tribe may take over responsibility for permitting for navigable waters and these Standards shall be modified accordingly.

32B-4-2. COMPLIANCE SCHEDULES.

- A. On a case-by-case basis, the Tribe may require the inclusion of a compliance schedule in NPDES permit for any existing facility that will discharge into Reservation waters.
- B. Such compliance schedule shall be for the purpose of allowing adequate time to make the modifications necessary to comply with these Water Quality Standards.
- C. Compliance schedules may be included in NPDES permits at the time of permit renewal or modification, and if included, shall require compliance at the earliest practicable time, as determined by the Water Quality Program.
- D. Compliance schedules shall specify milestone dates to measure progress towards final project completion, such milestones shall include, at the very least: design completion, construction start, construction completion, and date of compliance.

32B-4-3. NON-POINT SOURCE POLLUTION.

- A. Non-point source water pollution is managed through the use of Best Management Practices.
- B. Priorities for addressing current nonpoint source pollution issues shall be addressed in the Mescalero Apache Non-point Source Management Plan, which shall be developed by the Water Quality Program Specialist in DRMP and approved by the Tribal Council
- C. BMPs for source waters and wellhead protection shall be found in the Wellhead/Source Water Protection Plan for the Mescalero Apache Indian Reservation, which shall be developed by the Water Quality Program Specialist and approved by the Tribal Council.

32B-4-4. MONITORING AND QAPP.

- A. All monitoring shall be in accordance with the Quality Assurance Project Plan for Surface Water Quality Monitoring on the Mescalero Apache Indian Reservation (“QAPP”).
- B. The QAPP and any revisions thereto shall be drafted by the DRMP and approved by the Tribal Council.
- C. Revision of the QAPP shall occur as required to reflect the best scientific methods available and to expand the scope of monitoring.

32B-4-5. PRESERVATION AND ANALYSES.

- A. All methods of preservation and analysis used in determining water quality and maintenance of these Standards shall be in accordance with approved or accepted test procedures published and

approved of by the U.S. E.P.A.

- B. Other methods that are not U.S. E.P.A.-approved may be used as determined to be appropriate by the Water Quality Program.
- C. Any and all methods of preservation and analysis shall be included in the QAPP.

SECTION 5. VIOLATIONS, ENFORCEMENT AND PENALTIES

32B-5-1. VIOLATIONS, GENERALLY.

- A. Any person who knowingly introduces any object or substance into any Reservation water causing its quality to no longer meet these Standards shall be deemed guilty of a civil violation of these Standards and upon conviction thereof, shall be sentenced to labor for a period not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both.
- B. Any person who negligently violates the provisions of these Water Quality Standards shall be deemed guilty of a civil violation of these Standards and upon conviction thereof, shall be sentenced to labor up to fifty (50) days or a fine of up to Two Hundred Fifty (\$250.00) or both.
- C. In addition to civil fines or labor, any person who knowingly or negligently violates the provisions of these Water Quality Standards may be ordered to pay restitution in the amount associated with rehabilitating the affected water body to the greatest degree possible, as assessed by the Court, upon recommendations by the Water Quality Program.

32B-5-2. DIVERSION OF WATER.

- A. It shall be illegal for any person to divert water from its natural course, or to change the natural flow or course of water, without the express consent of the Tribal Council, which consent shall be evidenced by, and contained in, a duly enacted Tribal Resolution.
- B. Any person seeking the consent of the Tribal Council to divert water from its natural course shall first consult with the DRMP. Upon consultation, the DRMP shall make a recommendation to the Tribal Council.
- C. Any person who violates this Section shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00). Such person shall also be subject to restitution and civil forfeiture as provided herein.

32B-5-3. CIVIL COMPLAINT.

- A. Any person, including any Tribal Conservation or Reservation Law Enforcement Officer, may file a Complaint with the DRMP alleging that a person has or may have violated these Water Quality Standards.
- B. Such complaint shall state with specificity:
 - 1. The date and time of the alleged violation;
 - 2. The name and contact information for the alleged violator, the Complainant and any other persons witnessing or having information related to the alleged violation; and
 - 3. A description of the alleged violation.
- C. The Water Quality Program shall coordinate with the Tribal Prosecutor to investigate the Complaint and recommend to Tribal Conservation or Reservation Law Enforcement that a citation be issued.

32B-5-4. WATER QUALITY PROGRAM INVESTIGATIVE AUTHORITY. The DRMP shall coordinate with the Tribal Prosecutor to:

- A. Interview the Complainant, any persons named in the Complaint and the alleged violator;
- B. Perform other investigative efforts where a Complaint is received;
- C. Seek Court subpoenas or orders as necessary to facilitate investigation in the case of non-cooperation of any of the persons involved in a Complaint; and
- D. Request investigative assistance from Tribal Conservation or Reservation Law Enforcement as needed.

32B-5-5. NOTICE OF ALLEGED VIOLATION.

- A. Where the DRMP determines that a Tribal or Non-Tribal business entity or Tribal department has, is or may violate these Standards, the Tribal Prosecutor shall provide written notice of such determination as soon as possible to the alleged violator.
- B. Such Notice shall include:
 - 1. A description of the alleged violation;
 - 2. A time period of at least five (5) days from the date of the Notice, by which the conduct leading to the violation must be ceased; and
 - 3. Notice that a civil citation shall be issued if the violation does not cease.

32B-5-6. CEASE AND DESIST ORDERS.

- A. The Tribal Prosecutor may seek a Court order requiring any person against whom a Complaint has been filed to cease and desist from the activity leading to such Complaint.
- B. Any person found guilty of violating a cease and desist order shall be liable for civil contempt.

32B-5-7. AUTHORITY TO ISSUE CIVIL CITATIONS. Any duly commissioned Tribal Conservation or Reservation Law Enforcement Officer shall have the authority to issue a civil citation for violation of these Water Quality Standards where such Officer directly observes activity that is a violation of the these Standards or upon the recommendation of the Tribal Prosecutor.

32B-5-8. CIVIL FORFEITURE.

- A. Where any duly commissioned Tribal Conservation or Reservation Law Enforcement Officer directly observes activity that is an alleged violation of these Standards and issues a Civil Citation, such Officer shall have the authority to confiscate any and all equipment, vehicles, or other items in his or her possession or control at the time of the alleged violation.
- B. Forfeited items shall be held until and if the Court orders the release of such items.
- C. In any Court proceeding related to the alleged violation, the Court may order the sale of any items forfeited, the proceeds of which shall be paid toward any restitution ordered.

32B-5-9. NON-MEMBERS AND REMOVAL.

- A. Any individual who is not a member of the Tribe (“Non-Member”) suspected of having violated these Water Quality Standards shall be:
 - 1. Issued a Citation or notified that a Complaint has been filed with the DRMP and that a Citation may be issued;
 - 2. Immediately escorted to the Reservation boundary by a Tribal Conservation or Reservation Law Enforcement Officer; and
 - 3. Deemed to be temporarily excluded from the Reservation.
- B. He or she shall appear before the Tribal Court and pay any fees or fines as ordered.

- C. Where a Non-Member does not pay any fines, such person may be permanently excluded in accordance with § 10-18-1 of the Tribal Code.

SECTION 6. MISCELLANEOUS WATER QUALITY PROVISIONS

32B-6-1. VARIANCES.

- A. A variance from these Standards may be allowed in certain cases where the appropriateness of these Standards is questionable and a period of time is needed to re-evaluate the appropriateness of the Standards.
- B. More specifically, variances shall be issued where a Designated Use has been established and such Use is not now attainable but such Use may become attainable with reasonable effort.
- C. A variance shall be granted only after:
1. Thirty (30) days' notice of the proposed variance;
 2. An opportunity for the public to submit written comments;
 3. A recommendation by the DRMP that the variance be granted; and
 4. Approval by the Tribal Council.
- D. Variances from these Standards may be allowed where one or more of the reasons listed in herein relating to use-attainability analysis exists.
- E. Variances from these Standards shall be for specific pollutants and time-limited; no variance shall be for a period of time exceeding three (3) years.
- F. Variances shall not be automatically renewable. However, a variance may be reissued upon re-application for such variance and a finding of adequate justification.
- G. No variance shall be construed as a change in the Designated Use of the affected water. Only a duly adopted revision to these Standards shall result in a change of Designated Use.

32B-6-2. SHORT-TERM EXCEEDANCES.

- A. The Tribe shall permit short-term activities that may cause temporary violations of the Water Quality Standards if the Tribe determines that these activities are necessary to accommodate legitimate uses or emergencies or to protect the public health and welfare.
- B. Short-term exceedances may be allowed only for activities that are not likely to cause permanent or long-term impairment of beneficial uses such as, but not limited to:
1. Stream bank stabilization,
 2. Wetlands restoration,
 3. Algae and weed control,
 4. Hydrological studies that use tracer dyes,
 5. Activities that result in overall enhancement or maintenance of beneficial uses, or
 6. Restoration of water bodies
- C. An activity that could result in an adverse impact on any federally listed endangered or threatened species or on the critical habitat of such species may preclude authorization of a short-term exceedances.
- D. The Water Quality Program shall make recommendations as to the extent of an exceedance, the time limit, and where applicable, restoration procedures.

32B-6-3. PROCEDURES FOR NOMINATING OUTSTANDING TRIBAL RESOURCE WATER.

- A. The DRMP may, upon collection of water quality data providing evidence that a water body is of exceptional quality, propose recognition of such water body as an Outstanding Tribal Resource Water (“OTRW”) to the Natural Resource Committee of the Tribal Council (“Natural Resource Committee”).
- B. The Natural Resource Committee shall decide whether the existing evidence is sufficient to warrant an OTRW designation or that more evidence is required to satisfy such a designation.
- C. Upon approval, the Natural Resource Committee shall instruct the DRMP to publish, in the Apache Scout, or post, in at least two (2) public places, a Notice of Intent to Designate an OTRW. The Notice shall:
 - 1. Include instructions to the public regarding the submission of public comment; and
 - 2. Allow thirty (30) days from the date of publication or posting for public comment.
 - 3. No further public notice of the proposed designation shall be required.
- D. In the case that no public comment is received or public comment is supportive of OTRW designation, the Natural Resource Committee, with the assistance of the DRMP, shall present the recommendation that the designation as an OTRW be approved by the Tribal.
- E. In the case that public objection to the designation is timely and appropriate, as determined in the Water Quality Program:
 - 1. The DRMP shall seek to address such public objection;
 - 2. If the objection cannot be addressed but the Water Quality Program determines that designation is still appropriate, the DRMP shall again present its recommendation to the Natural Resource Committee;
 - 3. Upon concurrence with the recommendation, the Natural Resource Committee shall present the recommendation and the objection to the Tribal Council; and
 - 4. The Tribal Council shall either approve or disapprove the recommendation.
- F. A water body may be designated as an OTRW without substantiating documentation on water quality if the water body is associated with special cultural or spiritual.
- G. If the Water Quality Program recommends that a water body be removed from recognition as an OTRW, the Tribal Council shall review the evidence that supported the original determination along with information to support the removal of OTRW status.
- H. Approval of recognition or any changes in recognition status shall be in the form of a duly adopted Tribal Council resolution.

32B-6-4. COOPERATION WITH THE U.S. E.P.A. The DRMP shall work in cooperation with the U.S. E.P.A. and other local, state, and Tribal entities to monitor and restore water quality where water quality on or off the Reservation is dependent on such cooperation.

32B-6-5. PERIODIC REVIEW.

- A. These Standards shall be reviewed once every three (3) years following enactment.
- B. The Tribe shall hold a public hearing at least once every three (3) years for the purpose of reviewing and, as appropriate, revising these Standards. Notice of such hearing shall be posted in at least two (2) public places at least thirty (30) days prior.
- C. Any and all revisions shall incorporate relevant scientific and engineering advances.

D. In addition to the triennial reviews, the Standards may be revised from time to time as the need arises or as the Tribe becomes aware of updated scientific or monitoring information.

32B-6-6. ERRORS AND CORRECTIONS. Errors resulting from inadequate or erroneous data or human or clerical oversight will be subject to correction in the Water Quality Program. An error or correction thereof shall not render any unaffected part of the Water Quality Standards invalid in any way.

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CHAPTER 33

SKI SAFETY, RESPONSIBILITY AND LIABILITY ORDINANCE

SECTION ONE. INTRODUCTION AND DEFINITIONS

33-1-1. TITLE. This Ordinance shall be known and may be cited as the Ski Safety, Responsibility and Liability Ordinance.

33-1-2. PURPOSE OF ORDINANCE. There are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate by the ski area operator. It is the purpose of this Ordinance to define those areas of responsibility and affirmative acts for which a ski area operator shall be liable for loss, damage or injury, and those areas which the skier expressly assumes or shall be considered to have voluntarily assumed the risk and responsibility of loss or damage and for which there can be no recovery; to define the legal responsibilities of ski area operators and their agents and employees; to define the legal responsibilities of skiers and passengers using ski areas, and to define the rights and liabilities existing between skiers, passengers and the ski area operator and between skiers and passengers.

33-1-3. DEFINITIONS. As used in this Ordinance, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

- A. Skier means any person present at Ski Apache Resort and those persons admitted to Ski Apache Resort for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and all other areas and includes any person using a ski lift while loading, unloading or at any time prior to their complete loss of contact with the surface of the snow, ice or ground while unloading, and includes any person utilizing a ski area for the purpose of skiing or for the purpose of sliding downhill on skis.
- B. Passenger means any person who is being transported or conveyed by a ski lift and is completely out of contact with the snow, ice, ground or other surface on an aerial lift or has successfully loaded and not yet reached the unload point on a surface lift and includes a person, skier or non-skier, who gets on or off of or is transported by a ski lift, regardless of whether the ski lift is being used during the ski season or during some other time of the year.
- C. Ski Slopes or Ski Trails means those areas designated by the ski area operator to be used by skiers for any of the purposes related to participation in the sport of skiing. Ski slopes or trails shall be set forth on a trail map, and shall be designated by signs indicating to the skiing public the relative degree of difficulty of the trails pursuant to that system of rating in use by the National Ski Areas Association.
- D. Ski Area means all ski slopes or trails and all other places under the control of the ski area operator and administered within the boundaries of Ski Apache Resort.
- E. Ski Area Operator means the Mescalero Apache Tribe, Inn of the Mountain Gods Resort and Casino, Ski Apache and including its ski school instructors, ski patrol, lift operators, employees, managers, agents and representatives.
- F. Ski Lift means a device for transporting persons uphill with or without skis. Ski Lift includes the following devices:
 - 1. Chairlift: a device on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, or similar devices.
 - 2. Gondola: a device on which passengers are carried in an enclosed cabin suspended in the air and attached to a moving cable supported by trestles or towers with one or more

spans, or similar devices.

3. J-bar, T-bar or Platter Pull: devices that pull skiers standing on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans or similar devices.
 4. Rope Tow: a device with one span and no intermediate towers that pulls skiers riding on skis as they grasp a rope manually, or similar devices.
 5. Wire Tow Rope: a device with one span and no intermediate towers by which skiers are pulled on skis while manually grasping a bar attached to a wire hauling cable.
- G. Ski(s) means alpine skis, snowboards, telemark skis, mono skis, snowblades, snow skates, disabled skiers ski devices, tubes or any other device for sliding downhill for work, sport or recreation.
- H. Ski Retention Device means a device designed to prevent runaway skis.
- I. Conditions of Ordinary Visibility means daylight and, when applicable, nighttime in non-precipitating weather.
- J. Snowmobile means any of a variety of motorized sleds designed to carry passengers or to tow a non-motorized sled on snow.
- K. Tree Skiing means skiing in areas where there are trees.
- L. Jumping means becoming or attempting to become airborne by whatever means. Jumping also includes exiting from a ski lift at other than designated unloading points.
- M. Tribal Member means any person who is a member of the Mescalero Apache Tribe.
- N. Non-Tribal Member means any person who is not a member of the Mescalero Apache Tribe.
- O. Visible means something can be seen under conditions of normal, cloudless mid-day sun at a distance of fifty (50) feet.

SECTION 2. ASSUMPTION OF RISK; DUTIES TOWARDS SKIERS

33-2-3. ASSUMPTION OF THE RISKS OF SKIING BY OPERATION OF LAW FOR SKIERS. Skiing, as a recreational sport, is hazardous to skiers regardless of all feasible safety measures which can be taken. A skier expressly assumes the risk of and legal responsibility for any loss or damages that result from skiing, including but not limited to: losses or damages caused by variations of terrain; surface or subsurface snow or ice conditions; bare sports, rocks, trees, stumps or other forms of forest growth or debris; lift towers and their components either above or below the snow surface; utility poles; and plainly marked or visible snowmaking, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants; racing or running gates from competitive or recreational purposes, regardless of the course construction or layout; use of a snowboard or ski terrain garden or area.

33-2-4. DUTIES OF SKI APACHE RESORT WITH RESPECT TO SKI AREAS. Ski Apache Resort shall:

- A. Furnish all trail maintenance vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are moving in the ski area while it is open to skiers;
- B. Mark all snowmobiles, which are not trail maintenance vehicles, with at least one of the following:
 1. A Flag on a raised pole of at least six (6) foot in height above the tracks as they touch the snow surface;

2. Headlight;
 3. Rotating/Flashing Light
- C. Mark conspicuously the top (the most uphill beginning) of each slope or trail with an appropriate symbol for its relative degree of difficulty using the system for such marking employed by the National Ski Areas Association as it shall be amended from time to time; and those slopes or trails which are closed shall be marked at the top (the most uphill point) with a Closed sign, a rope or other visible device;
 - D. Maintain one or more trail map boards at prominent locations at the ski area, displaying the areas network of ski trails and slopes with each trail and slope rated thereon as to its relative degree of difficulty;
 - E. Make ski area trail maps available to skiers at the ski area;
 - F. Place, or cause to be placed, whenever snow grooming or snowmaking operations are being undertaken upon any trail or slope when such trail or slope is open to the public, a visible notice to that effect at or near the top (the most uphill beginning) of such trail or slope;
 - G. Post notice that ski retention devices are required for all skis. This posting shall be the sole requirement imposed upon the ski area operator regarding the requirement for, or use of, ski retention devices by skiers;
 - H. Provide a ski patrol trained in first aid, winter rescue and toboggan handling to serve injured skiers and to provide personnel trained for the evacuation of passengers from stalled ski lifts;
 - I. Post a sign at the entrance of the Ski Apache Resort notifying visitors that use the Resort is regulated by this Ordinance.
 - J. Have no duty or legal liability of any kind to any skier for accidents or injuries caused by the inherent risks of skiing, to any skier skiing out of control or in violation of any skier duty as defined herein, or to any skier skiing beyond the area boundaries marked as required by this section, or to any skier "tree skiing" or skiing beyond designated trails and slopes within the Ski Apache Resort boundaries.
 - K. Upon finding a person skiing in a careless and reckless manner, which includes but is not limited to "Jumping" or skiing beyond ski area boundaries or beyond designated trails and slopes within the ski area boundaries, may revoke or limit that person's skiing privileges.
 - L. Have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection A above.
 - M. Have no liability for any injury, harm or other damage for acts undertaken in an attempt to eliminate, alter, control, or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection A above.

33-2-5. DUTIES OF THE SKI APACHE RESORT – SIGNS REQUIRED FOR SKIERS' INFORMATION.

- A. The Ski Apache Resort shall maintain a sign system with information required by this Act. Signs shall be readable under conditions of ordinary visibility. Signs shall be posted as follows:
 1. At or near the loading point of each passenger ski lift, regardless of the type, advising that any person not familiar with the operation of the lift device shall ask the operator of the device for assistance and instruction;
 2. At all chairlifts, J-bars, T-bars, Platter Pulls, Rope Tows, and any other surface lift stating the following:

- a. “Prepare to Unload” which shall be located ahead of the unloading area;
 - b. “Keep Ski Tips Up” which shall be located ahead of any point where the skis may come in contact with the platform or the snow surface;
 - c. “Unload Here” which shall be located at the point designated for unloading;
 - d. “Safety Gate” which shall be located where applicable;
 - e. “Remove Pole Straps From Wrist” which shall be located at each loading area;
- B. Other signs not specified by Subsection A of this section may be posted at the discretion of Ski Apache Resort.
- C. Ski Apache Resort, before opening any ski lift to the public each day, shall inspect such ski lift for the presence and visibility of the signs required by Subsection A of this section.
- D. Evidence that the signs required by Subsection A of this section were present, visible, and readable on any given date raises the presumption that all visitors have seen, read and understood said signs.
- E. Trail maps shall explain the following signs and symbols:
- 1. Ski Apache Resort’s least difficult trails and slopes shall be designated by a green circle and/or the words “Easier or Easiest”;
 - 2. Ski Apache Resort’s most difficult trails and slopes shall be designated by a black diamond and/or the words “Most Difficult”;
 - 3. Ski Apache Resort’s trails and slopes with a degree of difficulty between the green circle and black diamond designation shall be designated by a blue square and/or the words “More Difficult”.
- F. DUTIES OF PASSENGERS.
- 1. No passenger shall board or attempt to board a ski lift if he does not have sufficient physical dexterity, ability, and knowledge to embark upon or disembark from or use such equipment safely, or until such passenger has asked for and received information or assistance sufficient to enable him to use the equipment safely. The passenger is required to follow any written or verbal instruction that is given to him regarding the use of the ski lift.
 - 2. No Passenger shall:
 - a. Get on or off a ski lift except at a designated area, except in the event of stoppage of the ski lift, and then only under the supervision of the operator;
 - b. Throw or expel any object from any ski lift while riding on such device, except as permitted by the operator;
 - c. Act in any manner that may interfere with proper or safe operation of such ski lift;
 - d. Place in an uphill track of a J-bar, T-bar, Platter Pull, Rope Tow, or any other surface lift, any object that could cause another skier to fall;
 - e. Embark upon a ski lift marked as closed;
 - f. Disobey any instructions posted in accordance with this article or any verbal instructions by the ski area operator regarding the proper or safe use of a ski lift;
 - g. Willfully or negligently engage in any type of conduct which contributes to or

causes injury to any person, including themselves;

- h. Wear skis without properly secured ski retention devices; or
- i. Use a ski lift while impaired to the slightest degree or under the influence of any intoxicating liquor, controlled or prescribed substance or any other impairing substance;
- j. Do any act which interferes with the running or operation of the ski lift.

G. DUTIES OF SKIERS AND LEGAL BAR TO DAMAGE CLAIMS

1. Skiing is a recreational sport which is inherently hazardous to skiers, regardless of all feasible measures which can be taken by the ski area operator. It is the duty of each skier to conduct himself in accordance with this Act. A person who takes part in the sport of skiing assumes, as a matter of law, the dangers inherent in the sport and cannot recover damages for personal injury, property damage or death as a result thereof. Each skier, therefore, expressly assumes the risk of and the legal responsibility for any injury to person or property which results from participation in the sport of skiing at the Ski Apache Resort, including any injury, death or property damage cause by the following:

- a. Variations in terrain;
- b. Surface or subsurface snow or ice conditions including conditions created by snow making equipment;
- c. Natural objects above or below the snow surface, including, but not limited to, bare spots, rocks, trees, tree stumps, or other forms of forest growth or debris;
- d. Man-made objects above, below or partially below the snow surface which are visible or marked in accordance with this Act, including but not limited to, lift towers and components thereof, utility poles, signs, snowmaking, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants;
- e. Racing or running gates for competitive or recreational purposes, regardless of the course construction or layout;
- f. Use of snowboard or ski terrain garden or area or use of other objects for snowboard or ski activities;
- g. Collisions with other skiers or any objects or the snow surface;
- h. Falls while skiing or while loading or unloading from ski lifts;
- i. Injuries caused by malfunctioning ski equipment;
- j. Participation in a ski school class;
- k. Any other risk inherent in the sport of skiing.

2. Each skier shall:

- a. Have the sole responsibility for knowing the range of his/her own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability;
- b. Maintain control of speed and course at all times while skiing and maintain a proper lookout so as to be able to avoid other skiers and objects;

- c. Refrain from acting or skiing in a manner which may cause or contribute to his injury or to the injury of any other person;
 - d. Not stop in a place so as to obstruct a trail or cease to be visible to skiers above;
 - e. Yield to other skiers when entering a trail or starting downhill.
 - f. Use ski retention devices to help prevent runaway skis.
 - g. Ski only in areas which are designated for skiing by Ski Apache Resort.
 - h. Read and obey all posted signs. There shall be an irrefutable presumption that skiers have seen, read and understood all signs and information posted in accordance with this Ordinance. Under conditions of decreased visibility, the duty is solely on the skier to locate and ascertain the meaning of all signs posted in accordance with this Ordinance and all objects and conditions.
 - i. Not use any ski slope or trail while his/her ability to do so is impaired to the slightest degree or while he/she is under the influence of intoxicating liquors, controlled or prescription substances or any other impairing substance.
 - j. Not cross the uphill track of a surface lift except at locations designated by the operator.
3. The responsibility for collisions by any skier with any person or object, shall be solely that of the individual or individuals involved in such collisions. The primary duty shall be on the person skiing downhill to avoid collisions with any persons or objects below him.
 4. When involved in a skiing accident in which another person is involved who needs medical assistance or other assistance, a skier shall have the responsibility to obtain assistance for the injured person.
 5. When injured at Ski Apache Resort or when involved in a collision with another skier or object in which an injury results, a skier shall not leave the ski area before giving his name and current address to Ski Apache Resort, the location where the injury or collision occurred and the circumstances thereof. If this provision is violated, any injured skier or passenger or other injured party will be barred from making any claim against Ski Apache Resort as a matter of law.

H. LIMITATION OF SKI APACHE RESORT'S LIABILITY.

1. Ski Apache Resort cannot be liable for personal injury, death or property damage unless it has violated some duty given to it by this Ordinance and the violation is causally related to the injury and only if the injured party did not contribute to cause any injury to even the smallest degree of fault. Moreover, any claim hereunder is limited and controlled by the provisions of Sections 2.13 hereof.
2. Ski Apache Resort shall not be liable for personal injury, death or property damage cause solely or in part to even the smallest degree by any of the following:
 - a. Any conduct which violates any provision of this Act.
 - b. Any person who is not legally entitled to be in Ski Apache Resort.
 - c. By any object dropped, thrown or expelled by a passenger from a ski lift.
 - d. Collisions between a skier and any natural, manmade, or other object or person.
 - e. Improper use of ski lifts as defined in this Act.
 - f. Occurrences of nature.

- I. **STATUTE OF LIMITATIONS.** All actions arising from this Ordinance to recover damages for injury or death to persons or damage to property shall be commenced within two (2) years after the cause of action accrues and not thereafter.
- J. **PENALTIES.**
1. Any passenger who violates any of the provisions of this Ordinance shall be subject to immediate forfeiture of any further use of the ski lifts or ski area.
 2. Any skier who violates any of the provisions of this Ordinance shall be subject to immediate forfeiture of any further use of Ski Apache Resort.
- K. **INSURANCE AND ENGINEERING EVALUATIONS.**
1. At all times that Ski Apache Resort shall operate any ski lift, it will meet or exceed the requirements of ski areas in the State of New Mexico for insurance coverage amounts as expressed in the New Mexico Ski Safety Act.
 2. At all times that Ski Apache Resort shall operate any ski lift, it will cause its ski lifts to be evaluated once each year by a certified engineer with experience in ski lift operations.
- L. **RESOLUTION OF CLAIMS**
1. Any claims brought for injuries, death or property damage by person claiming damages from events occurring at Ski Apache Resort shall have their exclusive original jurisdiction, if permitted, in the Tribal Courts of the Mescalero Apache Tribe.
 2. Any such trials shall be by a panel of one (1) judge. At the request of either party, a jury of six (6) persons who are members of the Mescalero Apache Tribe may be empaneled at the expense of the party requesting said jury.
- M. **SOVEREIGN IMMUNITY.** Nothing contained in this Ordinance shall be deemed to imply in whole or in part, any waiver of the Sovereign immunity of the Mescalero Apache Tribe. Said Sovereign immunity may only be waived, in whole or in part, by an official resolution of the Mescalero Apache Tribal Council. Any person wishing to request such a waiver has the responsibility to make such a request to the Mescalero Apache Tribal Council, who will decide each request on a case by case basis. Absent such a resolution, there exists neither jurisdiction over nor the right to damages or other relief from the Mescalero Apache Tribe, Inn of the Mountain Gods Resort and Casino, Ski Apache (Ski Apache Resort) or its business entity, including its managers, agents, employees, insurers, tribal members, etc., in any Court and any such resolution shall be strictly construed and limited to the terms of the resolution.

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CHAPTER 34

WORKERS' COMPENSATION

SECTION 1. INTRODUCTION

34-1-1. BACKGROUND. This Ordinance is a reaffirmation of the existing policies, practice, customs and procedures of the Mescalero Apache Tribe. This Ordinance shall supersede and replace all current policies, practices, customs and procedures relating to any work-related injury suffered by Tribal employee or enterprise employee. This Ordinance shall be deemed to have been effective as of the 1st day of January, 2007.

34-1-2. PURPOSE. This Ordinance is intended to reaffirm existing policies, practice and procedures in administering and defining the Mescalero Apache Tribe's Workers' Compensation program in a manner that is fair to both employees and the Mescalero Apache Tribe.

34-1-3. SCOPE. This Ordinance applies to all Employees of the Mescalero Apache Tribe and Employees of the enterprise of the Mescalero Apache Tribe.

34-1-4. EXCLUSIVE REMEDY. This Ordinance shall be the exclusive method for compensation against the Mescalero Apache Tribe for injuries sustained in the course and scope of employment at the Tribe or enterprises of the Tribe. The liability of the Mescalero Apache Tribe for all injuries arising out of and in the course of employment at the Mescalero Apache Tribe is limited to the compensation provided to injured Employees and/or Dependents pursuant to this Ordinance. Such liability shall not be expanded except by amendment of this Ordinance by the Tribal Council.

34-1-5. NO WAIVER OF SOVEREIGN IMMUNITY. Nothing in this Ordinance shall be deemed or construed as a waiver of the Mescalero Apache Tribe's Sovereign Immunity. The Mescalero Apache Tribe does not consent to jurisdiction to the State of New Mexico state statutory workers' compensation system, nor the jurisdiction of New Mexico's Workers' Compensation Appeals Board, or any other court of law or equity.

SECTION 2. DEFINITIONS

34-2-1. DEFINITIONS.

- A. "Administrator" shall mean the agency that is responsible for managing the Mescalero Apache Tribe's Worker's Compensation Program. The Administrator's responsibilities include, but are not limited to, determining the compensability of claims, making payment to injured workers, medical providers and others, managing a trust account, if deemed appropriate, for the purpose of dispensing the Mescalero Apache Tribe's worker's compensation liabilities and , making reports to the Tribe or Tribal Council regarding its program and individual claims. The Administrator's duties are more fully described at Section 4 below.
- B. "Mescalero Apache Tribe" is a federally recognized Indian Tribe. Mescalero Apache Tribe shall include tribal government offices, tribal enterprises and all tribal government employees, departments and entities that fall under the direct supervision of the Mescalero Apache Tribe's tribal government offices, the enterprises of the Mescalero Apache Tribe or the Gaming Commission of the Mescalero Apache Tribe.
- C. "Child or Children" means the child of an Employee, under the age of eighteen (18) years, including an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, an illegitimate child, and a stepchild, if such stepchild was, at the time of the injury, a member of the Employee's family and substantially dependent upon the Employee for support. A child does not include any married children unless they are Dependents. A person might also qualify as a child according to tribal custom as determined by the applicable

Tribal Law as interpreted by the Tribal Council or its appointed legal representative.

- D. “Claimant” for the purposes of this ordinance shall mean any person who is employed by Mescalero Apache Tribe, except for independent contractors, who suffers an injury specific or cumulative, arising from the employment or occurring in the course and scope of the employment.
- E. “Compensable Injury” means a Work Injury to an employee when the injury arises while the employee is acting within the course and scope of employment and while performing the duties of employment in, on or off the premises of Mescalero Apache Tribe or whenever Mescalero Apache Tribe requires the Employee to perform the employment activities as fully described in this Ordinance. Injury cause by a third person or fellow Employee intended to injure the Employee for personal reasons which does not arise out of the scope of employment is not Compensable Injury under this Ordinance.
- F. “Tribal Council” means the Tribal Council of the Mescalero Apache Tribe as established by Tribal law, custom and tradition.
- G. “Days” shall mean calendar days unless otherwise provided.
- H. “Dependent” means the husband or wife, father or mother, child, grandfather, or grandmother, stepfather or stepmother, grandson or granddaughter, brother, sister, half-sister, half-brother, niece or nephew or any other extended family member, or good faith member of the house hold of the employee, as approved by the Administrator, who at the time of the Compensable injury that causes the Employee’s death is actually and necessarily dependent in whole or in part upon the earnings of the Employee.
- I. “Disability” shall mean calendar days unless otherwise provided.
- J. “Employer” means the Mescalero Apache Tribe or any Tribally owned entity or enterprise covered by its workers’ compensation policy.
- K. “Employer” means the Mescalero Apache Tribe, including all lands held in trust by the United States of America which the Mescalero Apache Tribe owns, controls, or possesses whether or not such land has reservation or tribal status.
- L. “Reservation” means all land held or owned by Mescalero Apache Tribe, including all lands held in trust by the United States of America which the Mescalero Apache Tribe owns, controls, or possesses whether or not such land has reservation or tribal status.
- M. “Spouse” shall mean the husband or wife of the Employee.
- N. “Tribe” shall mean the Mescalero Apache Tribe, Its members, employees and the enterprises of such Tribe.
- O. “Work Injury” shall include any physical or psychiatric injury, illness, or disease where the injury was proximately cause by the injured worker’s employment. In determining proximate causation to employment, an injury must be determined to be both arising out of and occurring within the course and scope of such employment. Injury shall include damage to artificial members, dentures, hearing aids, eyeglasses, and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incidental to an injury covered by this Ordinance. Work Injury shall not include injuries caused by the acts identified in Section 15 of this Chapter. Work Injuries under this section shall be either:
 - 1. Specific occurring, which means that the injury is a result of one incident or exposure which causes Disability or need for medical treatment; or

2. Cumulative occurring, which means that the injury is a result of repetitive mental or physical activities extending over a period of time, the combined effect of which causes any Disability or need for medical treatment. The date of a cumulative injury is the date upon which the Employee first suffered disability and knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his present or prior employment.

P. "Written Decision" shall mean the following:

1. Any finding, decision, or award reduced to written form by the Appeal Board; or, other form established pursuant to this ordinance or by Mescalero Apache Tribe Tribal Council; or
2. The finding(s) and decisions(s) of the Administrator to accept in full or in part, or deny in full or in part, or to close any claim submitted by a claimant regarding a Work Injury.

SECTION 3. REPORTING OBLIGATIONS

34-3-1. OBLIGATION OF EMPLOYEE TO REPORT INJURY An Employee must report any injury, no matter how slight, to his/her supervisor within twenty-four (24) hours of the accident, which caused the Work Injury. No compensation or medical benefits will be paid if a Work Injury is not reported within fifteen (15) days of the Employee's Knowledge that the injury is actually or potentially related to employment. If the Work Injury incapacitates the Employee, the fifteen (15) days will not begin to run until the incapacity ends. Another person on behalf of the Employee may report a Work Injury.

34-3-2. OBLIGATION OF SUPERVISOR TO REPORT INJURY. A supervisor, receiving a report or notice of a Work Injury from the Employee or another person acting on the Employee's behalf, must promptly report the claim to the Administrator. A failure of the supervisor to report an injury will not be construed as a tolling of the statute of limitations when the employee can verify to the Administrator that the injury was properly reported.

SECTION 4. ADMINISTRATOR

34-4-1. DUTIES OF ADMINISTRATOR. The Administrator will act on behalf of the tribe in receiving, processing, and administering Workers' Compensation claims including payment of benefits under this Ordinance. The responsibility of the Administrator to make determinations and decisions will include but not be limited to the following areas:

- A. Based upon investigation and available information, the Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim. Within ninety (90) days of receipt of an initial report of injury, the Administrator will advise the Employee and Employer of this determination, or as soon thereafter as practical.
- B. The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this Ordinance. The Administrator will also approve or disapprove any request for a change of primary physician, referral to a physician, or surgical procedure.
- C. The Administrator will retain medical control for the life of the claim.
- D. Based on information supplied by Employer and/or Employee, the Administrator will determine the Compensation Rate payable to Temporary Total, Temporary Partial, Permanent Partial Disability, and Dependency and the length of time that such benefits shall be paid.
- E. The Administrator will determine the eligibility of Dependents and the terms of any Dependency Benefits payable.
- F. In the event of the need to allocate Dependency Benefits between Dependents living in different

households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise, of the decedent.

- G. If an Employee's claim is subject to the limitations of Section 34-15-4, the Administrator shall advise the Employee, Dependents and Employer of the effect of this limitation in writing.
- H. The Administrator will, on behalf of the Employer, vigorously pursue any cause of action assigned to the Employer under the Ordinance.
- I. Benefits payable to employees pursuant to this Ordinance shall be comparable to those mandated for comparable employees under state law. Notwithstanding this provision, nothing in this section or Chapter shall mandate the Mescalero Apache Tribe to provide benefits where the Administrator or Appeals Board has deemed the claim non-compensable, or the availability of a particular benefit inapplicable under this Ordinance.

SECTION 5. SCOPE OF COVERAGE

34-5-1. SCOPE OF COVERAGE. All Employees of Tribe or Tribal enterprises are covered for Compensable injuries whether the Accident and Work Injury occurred on or off the reservation. Benefits are limited as indicated in this Chapter. This Chapter shall not be construed or interpreted to provide benefits that are not specifically identified herein and the Employee has no right to enforce this Chapter in any Court of law; all enforcement rights are exclusively provided for in Section 34-1-3, herein.

SECTION 6. INDEPENDENT MEDICAL EXAMINATION

34-6-1. INDEPENDENT MEDICAL EXAMINATION DEFINED. For purposes of this Chapter, Independent Medical Examination means a medical examination and/or evaluation of the Employee scheduled by the Employer or Administrator, at the Employer's expense, for the purpose of obtaining medical information or opinion when a medical dispute arises under a claim, or when the compensatory nature of an alleged injury is dependent upon a medical determination

34-6-2. OBLIGATION OF EMPLOYEE TO SUBMIT TO IME. Whenever the right to compensation under this Chapter exists in favor of an Employee, the Employee shall, upon the written request of the Employer, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the Employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the Appeals Board.

34-6-3. FAILURE OF EMPLOYEE TO APPEAR FOR IME. If the Employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Employer for payment of medical expenses and/or other benefits relative to the workers' compensation claim ceases.

34-6-4. PRESUMPTION OF CLAIM ABANDONMENT. If an employee misses two consecutive appointments, there will be a rebuttable presumption that the employee has abandoned his or her workers' compensation claim, and no longer wishes to pursue treatment there under. The Presumption can be overcome by good cause shown for missing such appointments. "Good Cause" for purpose of this section includes but is not limited to family emergencies, unexpected injury or illness, acts of God, acts of terrorism, death of the treating physician.

SECTION 7. MEDICAL CONTROL OF CLAIM

34-7-1. ADMINISTRATOR IN FULL MEDICAL CONTROL. The Tribe through its Administrator retains full medical control for the duration of the claim and may or may not approve any request for the change of treating physician or facility at its sole discretion.

SECTION 8. DISPUTE RESOLUTION

34-8-2. MANAGERIAL REVIEW. When a final written determination has been made on a claim, an employee may request a managerial review of such determination at the Administrator's level. Such a

request must be made within thirty (30) days of the final written determination, and must outline in detail the basis for any disagreement. The failure to adhere to this requirement will constitute a waiver to any subsequent appeals. Requests for managerial review shall be sent directly to the Administrator for review and consideration. The Administrator shall respond in writing via certified mail to all request for review within a reasonable time, not to exceed sixty (60) days.

34-8-3. TRIBAL APPEALS BOARD. The Tribal Council shall appoint three (3) individuals to act as an Appeals Board to hear any issues and make any necessary final determination related to Compensability of a Work Injury, medical care or charges, extent of Disability, Dependency, or any other issue that may arise under this Chapter. The Appeals Board will hear the issue(s) de novo.

34-8-4. COMPOSITION OF APPEALS BOARD. The members of the Appeals Board shall be appointed by the Mescalero Apache Tribal Council. They shall be composed of three (3) members. One such member shall be a non-managerial employee in the Inn of the Mountain Gods Resort and Casino, and one member shall be a member of the Tribe who is not affiliated with any enterprise, government or activity of the Mescalero Apache Tribe. The remaining member shall be as appointed by the Tribal Council.

34-8-5. HEARING BEFORE APPEALS BOARD. Any Employee or Dependent who disagrees with a determination made by the Administrator may request a hearing before the Appeals Board. A hearing may also be requested if the Administrator has issued no written decision within 90 days of its receipt of an Initial Report of Injury.

34-8-6. TIME LIMIT FOR REQUESTING HEARING BEFORE APPEALS BOARD. As a secondary level of appeal, any employee or dependent may request a hearing before the Appeals Board within thirty (30) days of receipt of Administrator's written decision subsequent to managerial review. Failure to request a hearing within the time specified herein renders the Administrator's decision final.

34-8-7. HEARING TO BE SET WITHIN NINETY (90) DAYS. The matter will be scheduled for a hearing before the Appeals Board within ninety (90) days of receipt of the request for a hearing from the Employee or Dependent, or as soon thereafter as practicable. The Employee or Dependent may request in writing one extension of the initial hearing date of up to sixty (60) days, which must be granted by the Appeals Board.

34-8-8. REQUEST FOR APPEAL. Request for appeal may be made by forwarding a written request to:

Mescalero Apache Tribe Appeals Board
Post Office Box 227
Mescalero, New Mexico 88340

Written request must be served by certified mail on the Appeals Board and the applicable Human Resources Director (either Tribal or enterprise).

34-8-9. WRITTEN NOTICE OF HEARING DATE. The Appeals Board shall send written notice of each party informing them of the hearing date at least 20 days prior to the hearing.

SECTION 9. DISCOVERY

34-9-1. DISCOVERY.

- A. All medical reports relating to the claimed injury must be filed with the Appeals Board and served by U.S. First Class Mail or hand-delivery on all parties at least fifteen (15) days prior to the hearing date, if the reports have not been previously disclosed.
- B. Either party may request, in writing, disclosure of statements from witness(es), if any such statements exist, at least fifteen (15) days prior to the hearing date.
- C. Upon written request by a party, depositions may be ordered by the Appeals Board. The Appeals Board shall have authority in the Appeals Board's absolute discretion to order depositions of

party witness(es), including current employees of the Mescalero Apache Tribe. Attorney's fees and cost incurred in taking any such deposition shall be borne by the party requesting the deposition. Claimant's refusal to submit to any deposition shall be borne by the party requesting the deposition. Claimant's refusal to submit to any deposition ordered by the Appeals Board may be grounds for denial of the appeal.

SECTION 10. THE HEARING

34-10-1. CONDUCT OF HEARING. The Appeals Board shall consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just and final determination.

34-10-2. STANDARD OF PROOF. The Appeals Board shall weigh the evidence, testimony of witnesses, and exhibits and make its decision on the basis of the preponderance of the evidence and credibility of the evidence and witnesses.

34-10-3. BURDEN OF PROOF. The burden of proof in any hearing before the Appeals Board shall be on the Employee or Dependent, Upon request, a Dependent who has filed a claim, must furnish the Administrator with proof, satisfactory to the Administrator, of the nature, amount and extent of the contribution Employee made to Dependent's support. Dependent shall have the burden of proof on such issue in any hearing before the Appeals Board.

SECTION 11. RIGHT OF COUNSEL

34-11-1. COUNSEL. Any right to counsel shall be governed by the right of such counsel as prescribed and allowed in the Tribal Courts.

SECTION 12. LAW TO APPLY

34-12-1. GOVERNING LAW. Any claim brought under this Chapter shall be determined in accordance with Tribal law and the principles of law applicable to similar claims arising under applicable federal law. To the extent that Tribal law differs from federal law, Tribal law shall be applied. State case law may be used as a non-binding source of guidance, if the Appeals Board so desires. Any use of State statutory law for guidance shall be liberally construed in favor of the Employer. The use of federal or State case law as a source for guidance shall not be deemed or construed as a waiver of the Mescalero Apache Tribe's sovereign immunity.

SECTION 13. FINAL DECISION

34-13-1. FINAL DECISION. Any final Decisions of the Appeals Board must represent the concurrence of a majority of the Board members. An Appeals Board Decision must be issued in writing and copies must be mailed to all interested parties. The Decision shall generally review the evidence and testimony and may compare the merits of the evidence or testimony of the opposing parties. The Decision shall state the final determination of the Appeals Board on all issues before it. All Decisions of the Board are final. No attorney's fees, costs or punitive damages, including, but not limited to, punitive damages awards for (1) delay in payment of benefits, (2) serious and willful misconduct, or (3) discrimination against an Injured Employee, shall be awarded to any Employee or Dependent in such action.

SECTION 14. EFFECT OF REQUEST FOR HEARING

34-14-1. BENEFITS TO CONTINUE DURING APPEAL. During the pendency of the action, the Employee of Dependent shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed before the Appeals Board, unless and until the Appeals Board has issued a written decision awarding additional benefits.

34-14-2. RECOUPMENT OF PAYMENTS. Payments made to the Claimant during the pendency of the action shall not be recouped or recovered by the Administrator or Employer, except in cases of fraud, or recovery from third parties.

SECTION 15. ACTS OUTSIDE COURSE OR SCOPE OF EMPLOYMENT

34-15-1. NO COVERAGE IF ACTING OUT OF SCOPE OF EMPLOYMENT. Employees determined to be acting outside of the course or scope of their employment shall be afforded no coverage under this Chapter.

34-15-2. TRAVEL TO AND FROM WORK OUT OF SCOPE OF EMPLOYMENT. An Injury occurring to an Employee while on the way to or from work in not within the due course or scope of employment unless such travel is in direct connection with the Employee's work and at the request of Employer.

34-15-3. VOLUNTARY PARTICIPATION IN SPORTING ACTIVITIES. Any Injury sustained by an Employee while the employee participates in a voluntary intra-mural sporting event or activity shall not be deemed to be a work-related injury or to have been suffered or sustained within the course or scope of the employee's employment.

34-15-4. LIABILITY FOR OTHER ACTIVITIES EXCLUDED. Liability for compensation shall not exist against the Tribe for any injury sustained by and Employee if the injury is caused by any of the following:

- A. Where the injury occurs as a result of intoxication or is caused by the unlawful use of a prescribed or non-prescribed controlled substance;
- B. Where the injury is self-Inflicted;
- C. Where the Employee has willfully and deliberately cause his or her own injury or death;
- D. Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor;
- E. Where the injury is caused by the commission of a crime by the Injured Employee and the Employee is found to have committed such act by preponderance of the evidence;
- F. Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, including but not limited to, activities sponsored by Employer; or
- G. Where the injury is predominately (greater than 50%) caused by a pre-existing condition or injury; or
- H. Psychological injury that is not predominantly (greater than 50%) work-related, provided that such psychological injury result from a sudden and extraordinary employment event, which shall not include good faith and/or justifiable supervisory action
- I. Where the injury is actually or proximately cause by the inhalation of second hand smoke.
- J. Where an injury is diagnosed as reflex sympathetic dystrophy (RSD) or complex regional pain syndrome (CRPS)
- K. Where the injury is caused by participation in horseplay.

SECTION 16. WORKERS COMPENSATION BENEFITS

34-16-1. CUSTOMARY MEDICAL COSTS. Usual and customary medical costs as approved by the Administrator; unless there are extenuating circumstances, medical services and providers utilized must be pre-approved by the Administrator.

34-16-2. TEMPORARY DISABILITY. The benefits payable to an injured Employee as a result of a Compensable Injury resulting in Temporary Disability of the Employee shall be parallel to those benefits recoverable under State law at the time the Compensable Injury was sustained. However, nothing herein shall mandate the Mescalero Apache Tribe provide the exact same benefits recoverable under State law.

34-16-3. LIMITATION OF TEMPORARY DISABILITY. Except for severe injuries that usually require extended recuperation (e.g. severe burns, amputations, and major surgeries). Temporary Disability benefits shall not extend beyond 104 weeks. For severe injuries, Temporary Disability shall not extend beyond 240 weeks.

34-16-4. PERMANENT PARTIAL DISABILITY. For purposes of this Chapter, Permanent Partial Disability shall mean a permanent disability with a rating of less than 100 percent permanent disability.

- A. In determining the percentages of permanent partial disability, account shall be of the nature of the physical Injury or disfigurement, the occupation of the injured worker, and the Employee's age at the time of the injury, with consideration given to the diminished ability of the Employee to compete in an open labor market.
- B. The scheduled of the administrative director of the New Mexico Worker's Compensation Division may be used as guidance in determining the percentages of permanent partial disability, but is not prima facie evidence of a percentage of disability.
- C. The benefits payable to an injured Employee as a result of a Compensable Injury resulting in Permanent Partial Disability of the Employee shall be parallel to those benefits recoverable under State law at the time the Compensable Injury was sustained.
- D. In no event shall permanent disability for any and all work related injuries combined exceed an aggregate total of 100%

34-16-5. PERMANENT TOTAL DISABILITY. Permanent total disability is a disability that precludes the injured Employee from any and all gainful employment. There shall not be any presumptions of permanent total disability.

- A. Compensation shall be paid at the same rate as is paid for temporary disability benefits
- B. The Employee and Mescalero Apache Tribe may elect to settle permanent disability benefits by the payment of a lump sum.

34-16-6. VOCATIONAL REHABILITATION. If an employee by reason of permanent disability or impairment is unable to return to his or her usual and customary work, or in the alternative, a permanent modified or an alternate position, Mescalero Apache Tribe will work with the injured Employee to provide the means necessary to return the employee to suitable gainful employment. This may include either:

- A. Assistance in the participation of vocational retraining through an approved and accredited school or program; or
- B. A provision as a part of any permanent disability or permanent impairment compromise and release settlement to cover for miscellaneous expenses related to job searching or placement.

34-16-7. COMPENSATION LIMITS. In no event shall compensation payable pursuant to this Chapter exceed \$500,00.00 per occurrence.

34-16-8. NO COMPENSATION AFTER DEATH OR RETIREMENT. No compensation under this section shall be payable to the Employee subsequent to the death or retirement of the Injured Employee.

34-16-9. NO COMPENSATION IF INCARCERATED. No compensation under this section shall be payable upon incarceration of Employee.

34-16-10. FATALITY INCOME BENEFITS. When an Injury causes death within three (3) years from the date of the injury, the Employer shall be liable for compensation to the Dependent of the Injured Employee as provided for in this section. The Dependent must be qualified as defined in this Chapter, and must be totally or partially dependent upon the injured worker, at the time of the injury and at the time of death in order to qualify for benefits.

34-16-11. LIMIT OF DEATH BENEFIT. The death benefit payable under the Chapter shall be comparable to those death benefits payable under state law at the time of the Employee's death. However, nothing herein shall mandate the Mescalero Apache Tribe provide the exact same benefits recoverable under state law. In no instance shall the amount payable to an Employee's dependents exceed \$500,00.00.

SECTION 17. STATUTE OF LIMITATIONS.

34-17-1. FILING DEADLINE. Except as otherwise provided herein, the right to benefits for Disability, Death or permanent impairment under this Chapter shall be barred unless a Claim therefore is filed with the Administrator within sixty (60) days after the occurrence of the Compensable injury. The time for filing a Claim shall not begin to run until the Employee or Dependent is aware, or by the exercise or reasonable diligence should have been aware, of the relationship between the injury or death and the compensable injury.

34-17-2. FINALITY OF DECISION. A claim that is not appealed timely pursuant to Section Eight above will render the administrator's decision of the claim final.

34-17-3. LAPSE OF TREATMENT. In no case will further treatment be permitted when a year or more has elapsed since the last date of medical treatment. Once a year has passed from the last date of medical treatment, the claim will be presumed permanently closed with no opportunity to reopen unless the Tribe should in its discretion decide otherwise.

SECTION 18. COMPROMISE AND RELEASE.

34-18-1. COMPROMISE AND RELEASE. Nothing in this Chapter shall impair the rights of the parties to compromise any liability that is claimed to exist under this Chapter on account of injury, disease or death, subject to the provisions herein. After reaching a compromise, copy of the release or compromise agreement signed by both the Claimant and the Administrator shall be presented to Tribal Council, or a designated representative, for approval. If approved, the Administrator shall enter an award based on the release or compromise agreement.

SECTION 19. STIPULATION AWARD.

34-19-1. STIPULATION AWARD. An injured worker may elect to settle only the permanent disability benefits through a Stipulated award and leave the future medical care benefits open while still an employee of Mescalero Apache Tribe.

SECTION 20. CLAIM CLOSURE.

34-20-1. CLAIM CLOSURE. An Employee's claim shall be closed when the Administrator determines that the injured Employee has reached the point where no further material improvement would reasonably be expected from medical treatment, when an Employee has abandoned treatment or has unreasonably failed to follow-up with medical care, or for any other reasons stated in this Chapter.

SECTION 21. RECOVERY OF PAYMENTS MADE DUE TO ERROR, MISTAKE, OR FRAUD.

34-21-1. RECOUPMENT OF PAYMENTS MADE IN ERROR. Whenever any payment of Compensation under this Chapter is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud. The recipient thereof shall repay it. The Administrator must make a claim for such repayment or recoupment within one year of making any such payment or it will be deemed that any claim there for has been waived. Upon the approval of the Tribal Council, or a designated representative, the Administrator may waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

34-21-2. RECOUPMENT AFTER APPEAL. Whenever the Administrator has made any payment of Compensation under this Chapter pursuant to a determination and timely appeal therefrom has been

made, which results in a final decision that the Claimant is not entitled to such payments, the Claimant shall repay such sums. Subject to approval by the Tribal Council or their authorized representative, the Administrator may waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

34-21-3. RECOUPMENT OF PAYMENTS INDUCED BY FRAUD; PENALTIES. Whenever any payment of benefits under this Chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of Fifty percent (50%) of the total of any such payments. The Administrator must make a claim for such repayment or recoupment within one year after discovery of the fraud, or any such payment or any such claim shall be deemed to have been waived. The Injured Employee consents to jurisdiction in the courts located in the Tribal Court of the Mescalero Apache Tribe, for enforcement of this Section.

SECTION 22. CLAIM FILES AND RECORDS CONFIDENTIAL

34-22-1. CLAIM FILES CONFIDENTIAL. Information contained in the claims files and record of injured Employees under the provision of this Chapter shall be deemed property of the Tribe, and is strictly confidential and shall not be open to public inspection. The Employee Dependents or representative of the same, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. The Employer or its duly authorized representatives may review any files of their own injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this Chapter, or physicians giving medical advice to the Administrator regarding any claim may, at the direction of the Administrator, inspect the claims files and records of the injured Employee; and other persons may make such inspection, at the Administrator's discretion when such persons are rendering assistance to the Administrator at any stage of the proceedings on any matter pertaining to administration of this Chapter. The information contained in the claims file is the property of the Tribe and is not subject to discovery outside of this Chapter. Further, federal, state, administrative or other courts, shall have no jurisdiction on compel production and discovery of such claim files.

SECTION 23. SEVERABILITY & AMENDMENT

34-23-1. SEVERABILITY. If any part of this Chapter is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

34-23-2. AMENDMENT. This Chapter may be amended in accordance with applicable Tribal law.

SECTION 24. SOVEREIGN IMMUNITY.

34-24-1. SOVEREIGN IMMUNITY PRESERVED. Nothing contained herein is intended to be, or shall be deemed, construed or interpreted as, a waiver Mescalero Apache Tribe's sovereign immunity. Moreover, nothing contained herein shall be deemed, construed or interpreted as a consent by Mescalero Apache Tribe to jurisdiction of any federal, State or Administrative Court of Law, including but not limited the State Workers' Compensation Appeals Board.

CHAPTER 35

TORTS AND CLAIMS AGAINST THE MESCALERO APACHE TRIBE

SECTION 1. TORTS.

35-1-1. SLANDER, LIBEL, & INTENTIONAL INTERFERENCE. The Mescalero Apache Tribal Court shall recognize the civil torts of slander, libel, and the intentional interference of a contract as those common law torts have been recognized in jurisdictions outside of the Mescalero Apache Reservation.

35-1-2. PROOF OF DAMAGES. The Mescalero Apache Tribal Court shall recognize that a false and hurtful statement made against another individual is in fact damaging to the name and reputation of the victim and, therefore, prima facie proof of damages to the victim that is sufficient to provide the victim a reasonable monetary recovery in an amount sufficient to discourage such indecent and vile conduct in the future.

SECTION 2. CLAIMS AGAINST TRIBE.

35-2-1. NOTICE OF CLAIMS.

- A. Every person who claims damages from the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe shall cause to be presented to the President of the Mescalero Apache Tribe a written notice stating the time, place and circumstances of the loss or injury. Such notice shall be presented in person to the President at 101 Central Boulevard, Mescalero, New Mexico 88340 or by mail at Post Office Box 227, Mescalero, New Mexico 88340.
- B. No suit or action shall be maintained and no court shall have jurisdiction to consider any suit or action against the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe unless notice has been given as required by this section, or unless the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe had actual notice of the occurrence. The time for giving notice does not include the time, not exceeding 90 days, during which the injured person is incapacitated from giving the notice by reason of injury.
- C. When a claim under this provision is made for wrongful death, the required notice may be presented by, or on behalf of, the personal representative of the deceased person or any person claiming benefits of the proceeds of a wrongful death action, within six months after the date of the occurrence of the injury which resulted in the death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

35-2-2. STATUTE OF LIMITATIONS. Any actions against the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe for torts shall be forever barred, unless such action is commenced within two (2) years after the date of occurrence resulting in loss, injury or death, except that a minor under the full age of fourteen (14) years shall have until his sixteenth (16) birthday in which to file. This subsection applies to all persons regardless of minority or other legal disability.

35-2-3. NO WAIVER OF SOVEREIGN IMMUNITY. No provision of this ordinance shall be construed as any waiver of the sovereign immunity of the Mescalero Apache Tribe.

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CHAPTER 36

CODE AUTHORIZATION

SECTION 1. GENERAL

36-1-1. AUTHORIZATION. This Code is hereby adopted by the Mescalero Apache Tribal Council, to become effective upon signature of the President of the Mescalero Apache Tribe. The Code repeals some former ordinances and incorporates others.

36-1-2. TITLE. This Code shall be titled and referred to as "The Mescalero Apache Tribal Code of 2016."

36-1-3. FUTURE ADDITIONS. Additions, amendments and changes of this Code shall be by Ordinance of the Mescalero Apache Tribal Council with approval by the President of the Mescalero Apache Tribe.

36-1-4. SEVERABILITY.

- A. If any provision of this Code or the application thereof to any person or circumstance is held invalid, the invalidity does 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 severable.
- B. Any provisions of this Code or the application thereof to any person or circumstance held to be invalid shall make any prior existing Ordinance or Law of the Mescalero Apache Tribe valid and enforceable that has been replaced by an invalid provision of this Code.

SECTION 2. REPEAL.

36-2-1. ORDINANCES REPEALED. Provisions of previous Ordinances either in conflict or inconsistent with this Code are repealed. Such provisions are repealed only to the extent that they are conflicting or inconsistent.