

TITLE 35

CHEHALIS ZONING ORDINANCE

35.01.010 Statement of Purpose.

- (a) The Business Committee of the Confederated Tribes of the Chehalis Reservation enacts this Zoning Ordinance to ensure the orderly growth and development of its Reservation to meet the needs of its people and the residents of the Reservation. In addition, the Tribe seeks to assure the compatibility of land uses on the Reservation; to protect the natural resources native to the area; to assure that adequate locations are available for affordable housing and economic development; and to protect the property rights of all residents of the Reservation. With this Ordinance, the Tribe seeks to maintain the Reservation as a social, cultural, political, and economic unit for the continuing benefit and prosperity of the members of the Confederated Tribes of the Chehalis Reservation (“Chehalis Tribe”). Finally, this ordinance shall be interpreted so as to implement these purposes and those goals and standards listed below consistent with due process and equal protection.
- (b) The goals and objectives to be implemented by this ordinance are:
- (1) To ensure use of the land that is sensitive to its physical and aesthetic nature;
 - (2) To protect and reinforce traditional tribal lifestyles and culture by protecting the rural environment of the Reservation, its fishery and other natural resources;
 - (3) To provide properly planned community facilities, roads, and utilities, thereby promoting the health, safety and general welfare of reservation residents;
 - (4) To provide for carefully managed economic development;
 - (5) To ensure that adjacent land uses are functionally and aesthetically compatible;
 - (6) To protect and enhance fish, wildlife, forests, water, agriculture, and other natural resources;
 - (7) To prevent degradation of the Reservation environment including but not limited to air and water quality and the protection of Reservation ground and surface water supplies;
 - (8) To preserve the rural character of the Reservation;
 - (9) To provide for carefully managed gravel or other mineral mining;
 - (10) Chehalis Tribal culture emphasizes living within nature's limitations rather than

controlling nature for what is perceived by some as man's benefit. Land use on the Reservation should be compatible with the natural physical and aesthetic nature of Reservation lands. Development that is incompatible with the natural carrying capacity and ecological balance of the land is inconsistent with Chehalis tribal culture.

- (11) To ensure that housing and business developments meet the needs of tribal members as well as other Reservation residents. Among the housing needs of tribal members which development should meet is the need for low and moderate income housing which has suitable space for large families and adequate open space and recreational area;
- (12) To protect against the hazards of development in areas subject to flooding, long periods of standing water, and geologically unstable areas without impacting the historical and cultural patterns of Chehalis Tribe life;
- (13) To ensure that development is consistent with the capacity of public facilities and services;
- (14) To preserve and restore the natural conditions of Willamette Creek, the Chehalis and Black rivers and other Reservation aquatic areas;
- (15) To ensure that sewage disposal systems are adequate to protect the health and welfare of Reservation residents;
- (16) To preserve and protect cemeteries, archeological sites, and artifacts from despoliation;
- (17) To preserve existing views and vistas;
- (18) To maintain and enhance trails, berry and fruit picking areas of the Chehalis Tribe.

35.01.020 Findings.

(a) The Business Committee finds that:

- (1) The Chehalis Reservation was established to provide a permanent homeland for the use and benefit of the Chehalis Tribe.
- (2) The Chehalis Tribe has the jurisdiction and the duty to protect the health and welfare of the Chehalis Reservation, including without limitation, trust lands for which the Tribe holds the beneficial interest.
- (3) The Chehalis Reservation and associated trust lands constitute a small land base

that must provide for the economic, residential, cultural, recreational and governmental needs of the Chehalis tribal community, now and in the future.

- (4) Forestry, agriculture, fisheries, and wildlife provide for livelihoods, activities, and the exercise of tribal rights that are an integral part of Chehalis culture and identity.
- (5) The Chehalis Reservation contains ecologically sensitive lands, culturally sensitive historic sites and archaeological sites, and includes portions of the Willamette Creek and Black and Chehalis Rivers. Any action adversely affecting these resources adversely affects the Chehalis Tribe.
- (6) The existence of land within the Reservation suitable for these uses provides opportunities for members and other Reservation residents to pursue livelihoods and exercise Tribal rights dependent on these land resources.
- (7) Preservation of the Reservation's land resources and of employment opportunities dependent on forestry, fisheries, and agriculture land uses is essential for the continued maintenance of Chehalis tribal culture and identity.
- (8) Fisheries, agriculture, and forestry uses are predominant land uses within the Chehalis Reservation.
- (9) Agriculture, forestry, fisheries and wildlife and other rural uses are affected by the activities permitted and carried out on adjacent properties. Incompatible uses on adjacent properties will, where conflicts are created, negatively impact the continued use of agricultural, forestry, fishery related uses.
- (10) A significant portion of the land in the Reservation suitable for forestry, fishery, agriculture and other related uses is not currently served by adequate urban services such as sewer, water and public road systems. The pressure for development of such land for more intensive uses creates a concomitant pressure for publicly financed urban services which may cost more than the revenue generated by the development they serve.
- (11) Chehalis tribal culture and identity are threatened by unmanaged development of the Reservation.
- (12) Chehalis Tribal culture emphasizes living within nature's limitations rather than controlling nature for what is perceived by some as man's benefit. Land use on the Reservation should be compatible with the natural physical and aesthetic nature of Reservation lands. Development that is incompatible with the natural carrying capacity and ecological balance of the land is inconsistent with Chehalis tribal culture.

- (13) Preservation of the rural character of the Reservation and limitation of development to uses compatible with the natural physical and aesthetic nature of Reservation Land is essential for the continued maintenance of Chehalis tribal culture and identity.
- (14) A large portion of the land within the Reservation is unsuitable for intense development because of flooding hazards. This land is suitable for fisheries and wildlife, forestry, agriculture, and other historical or cultural uses. Improper development for more intensive uses aggravates flooding, adversely affects the Chehalis and Black River fisheries, replaces water retentive soils with impervious surfaces, and creates pressure for construction of publicly funded flow and stream bank control projects that disrupt fish and wildlife habitat function and natural flood control processes.
- (15) Urban services available on the Reservation including but not limited to water, sewage disposal, roads, fire and police protection are severely limited.
- (16) There is a need for sufficient development within Reservation to enable the development of housing, public services and employment for the residents of the Reservation.
- (17) Future development needs to be consistent with the Chehalis Flood Damage Prevention Ordinance, #1997-44, to meet flood hazard reduction standards and thereby reduce flooding threats and impacts to Reservation residents, their property, tribal services, and community infrastructure.

35.01.030 Definitions.

Accessory Use - A use subordinate to the principal use and located on the same parcel as the principal use.

Building Setback - The distance beyond which a building shall not extend into any yard or the distance a building or use must be removed from lot line or rights of way.

Business Committee – The Business Committee of the Chehalis Tribe

Channel Migration Zone (CMZ) - The lateral extent of likely movement along a stream reach with evidence of active stream channel movement over the past one hundred years.

Commercial – The providing of any goods or services for compensation.

Cultural Resources – Property that is identified as having spiritual, ceremonial, ancestral, archaeological, historical and cultural value to the Chehalis Tribe. Things of “cultural value” are those things or activities that are important to the continuance of the Tribe’s

identity and culture.

May - When used in this ordinance the word "may" indicates a discretionary decision to be made by the Chehalis Planning Department or Business Committee.

Non-Conforming Use - The use of a building, structure or parcel of land which does not conform to the regulations of the zone in which it is located. Such use is non-conforming regardless of whether it was lawful at the time this Ordinance, or any amendments thereto, became effective.

Official Zoning Map - The map approved by the Business Committee as a part of this Ordinance which describes the boundaries of the zones provided herein.

Planning Department - The Chehalis Tribal Planning Department.

Shall - A mandatory action ministerial in nature.

Site Development Standard - The standard established by this ordinance and other applicable tribal ordinances for proposed building sites such as but not limited to parking, yard area lot size, landscaping, buffering devices, access to public right-of-way, etc; these standards may vary from site to site.

Subdivision - A parcel of property which has been divided into two or more separate units by a tribally approved, registered plat. The act of dividing a parcel of property into two or more units.

Zone – An area of the Chehalis Reservation defined as to boundaries and location, and classified by the zoning code as available for certain types of uses and within which other types of uses are excluded.

35.01.040 Comprehensive Plan

- (a) The Planning Department is charged with developing and updating a Chehalis Comprehensive Plan that delineates land use zones within the Reservation and the land use activities permitted to occur within those zones. Such plan shall be effective upon approval by the Business Committee. Updates shall occur, as determined to be necessary by the Business Committee, but in no event, except under extraordinary circumstances found by the Business Committee to be necessary, shall the Comprehensive Plan be amended more often than once a year.

35.01.050 Description of Zones.

- (a) Chehalis Forested – The purposes of this zone are (1) to assure that development does not occur in floodplains or channel migration zones that pose an unreasonable hazard to lives, property, and water quality; (2) preserve the natural rural character of the

Reservation; and (3) preserve or rehabilitate larger contiguous tracts of land for forest resource management. Due to the unique character of the Reservation, that includes extensive river channel migration zones and floodplains, this zoning designation functions as a default designation in the absence of any other designation.

- 1) Permitted Uses include: forestry; fishing; hunting; fish and wildlife conservation and management; public parks and trails; harvesting of wild crops; and recreation. Any uses allowed in this zone must be non-intensive. No other uses shall be allowed without a special use permit.
- 2) Unless historically mandated consistent with the allotment of the Chehalis Reservation and its purposes, no construction of any structures shall be allowed within the floodplain. Activities within sensitive lands are governed by subsection (f).

(b) Rural/Agriculture – The purpose of this zone is to preserve small farm land use in areas subject to flooding and less suitable for development.

- 1) Permitted Uses include: livestock rearing; hay-growing; forestry; existing residential. Existing homes may be permitted to have new additions, remodeling, or additional out-buildings, but all must be in compliance with the Chehalis Flood Prevention Ordinance and the Permitting Ordinance.
- 2) Unless historically mandated consistent with the allotment of the Chehalis Reservation and its purposes, new construction on sites of less than 10 acres is not permitted.
- 3) Unless historically mandated consistent with the allotment of the Chehalis Reservation and its purposes, no construction of any structures within the floodplain shall be permitted. Activities within sensitive lands are governed by subsection (f).

(c) Commercial – The purpose of this designation is to enhance the economic and employment opportunities and services for Reservation residents by designating lands suitable for businesses.

- 1) Permitted Uses include: small and medium-sized wholesale and retail outlets, dealerships, professional services, food and entertainment, hotel/motel complexes, storage, shipping and receiving, and light manufacturing with no significant pollution discharge. Essential government services are also suitable for this zone.
- 2) Commercial uses may be permitted in the floodplain, provided that they comply with the requirements of subsection (f), the Tribe's Flood Damage Prevention Ordinance and a hydraulic study, funded by the proponent of the use, demonstrates that there will be no net loss of flood storage capacity.

(e) Residential – The purpose of this designation is to provide adequate space for housing present and future tribal members and Reservation residents.

- 1) Permitted Uses include: single family houses; multiple family units; group homes; assisted-living units; day-care centers; schools; churches; essential government services; and water distribution and treatment facilities.
- 2) New residential uses must comply with the requirements of the Tribe's Flood Damage Prevention Ordinance and subsection (f). Unless historically mandated consistent with the allotment of the Chehalis Reservation and its purposes or in cases of hardship, new residential uses may be allowed within the floodplain, by special use permit, where adequate septic or sewer service is assured. No net loss of floodplain storage capacity shall be allowed.
- 3) Planned Unit Developments containing apartments, duplexes on lots under one acre, and single family dwellings on lots one acre or less may be constructed to provide affordable housing within all residential designations. Planned Unit Developments shall not be located within the floodplain. Planned Unit Developments require a Special Use Permit as described in Section 35.01.060 of this ordinance.

(f) Sensitive Lands – The purpose of this designation/overlay is to identify those lands that are either uniquely sensitive to the impacts of development or where development poses an unreasonable threat to the health and welfare of Reservation residents.

- 1) Lands encompassed within this designation/overlay include river or stream channel migration zones; lands containing important archaeological, cultural, historical sites; tribal ceremonial sites; and cemeteries.
- 2) All water bodies, including lakes, flowing within or adjacent to the Reservation, are designated as Sensitive Lands. This designation includes channel migration zones and lands within 300 feet of the banks of the Chehalis and Black rivers; and 150 feet of all wetlands, lakes, and perennial tributaries to these rivers.
- 3) New land disturbing activities, other than Forestry, within Sensitive Lands may only occur pursuant to a special use permit, recommended by the Planning Department and approved by the Business Committee, based on a finding by the Department that the proposed activity shall not harm the function of the Sensitive Lands. Forest practices are governed by the Tribe's Forest Practices Ordinance.
- 4) Land-disturbing activities within wetlands, as defined under the current Federal Manual, may only occur pursuant to a special use permit, issued by the Planning Department and approved by the Business Committee, based on a

finding by the Department that the proposed activity shall not harm the function of the wetland or that the applicant has committed to implement actions that will completely mitigate any impacts to the wetland.

g) Commercial Seasonal Overlay – The purpose of this overlay is to recognize and provide for those lands customarily and traditionally used for seasonal wholesale and retail fireworks sales.

1) Seasonal wholesale and retail fireworks sales and related activities within the Commercial Seasonal Overlay are governed by the Tribe’s fireworks regulations.

35.01.060 Special Use Permit

(a) Purpose

(1) The special use permit is intended to allow flexibility and creativity in the application of this Ordinance by providing a procedure for the approval of uses not otherwise permitted in a zone where such uses are in conformity with the purpose of the zone and the overall objective of this ordinance.

(b) Application

(1) Application for special use permits shall be submitted to the Planning Department and shall be reviewed in accordance with the procedures set forth in subsections (c) to (f). When a business license is also required, the applications for a business license and special use permit shall be filed and processed concurrently.

(2) In determining whether or not to issue a special use permit, the following factors shall be considered:

A) The consistency of the use with the objectives of this Ordinance;

B) The compatibility of the use with the purpose of the zone in which it is proposed and its impact on the integrity of the zone;

C) The location of the proposed use and its physical harmony with the area in which it is proposed;

D) The environmental impact of the use;

E) The extent to which the use meets the housing, employment, and other needs of all Reservation residents.

F) The impact of the request upon the Chehalis Tribal culture and other purposes for which the Chehalis Reservation was created.

(c) The Planning Department and/or the Business Committee may impose appropriate site development standards and conditions in addition to those otherwise required by this and other applicable ordinances upon special use permits to ensure the compatibility of the proposed use with the objectives of this ordinance, and to mitigate any adverse environmental impacts.

(d) The following information must be submitted with a special use permit application:

- (1) Name and address of person submitting application
- (2) Name and address of legal owner
- (3) Legal description of property
- (4) Type of use proposed
- (5) A description and detailed plan of any anticipated construction on said property or currently owned adjacent property
- (6) Topographical contours and other physical features including all water sources (2 foot contours pre and post project)
- (7) Access right-of-way
- (8) Utility lines and easements
- (9) Solid waste disposal methods
- (10) Sewage disposal methods including soils information where private sewage disposal systems are proposed
- (11) Analysis of traffic patterns
- (12) Landscape plan
- (13) Phasing or timing of the project
- (14) List of restrictive covenants (if any) concerning quality of private structure and landscape to be erected
- (15) Water supply provisions and requirements

- (16) Fire and police protection
- (17) Road standards to be used for drives and roads
- (18) Storm drainage plans
- (19) List of deviations from normal requirements of tribal standards for such building or business
- (20) Any other relevant data requested by the Planning Department or Business Committee.

(e) Process for Reviewing Applications for Special Use Permits

- (1) Upon receipt of an application for a Special Use Permit, the Planning Department shall post notice of the pending application at the property in question and at locations within the Chehalis Reservation. The Department shall allow fourteen (14) days for the public to submit written comments on the application. The Department may determine that a meeting should be held to give the public an opportunity to provide oral comments. If the Department has decided that there should be an opportunity for oral comments on the application, the notice provided in this section shall state the time and location of said meeting, and shall be published in a newspaper of general circulation within the Chehalis Reservation. Notice of all scheduled comment meetings shall be published and posted at locations within the Chehalis Reservation at least five (5) days prior to any scheduled meeting. The Department shall consider the application and any written or oral comments it receives, make findings, and issue its decision within forty-five (45) days of receiving the application.

(f) Procedures Before the Business Committee

- (1) An appeal of the Planning Department's decision regarding issuance of a Special Use Permit must be filed with the Business Committee no later than ten (10) days after the Department issues its decision. The Business Committee shall either grant or deny an appeal within thirty (30) days of receipt of an appeal of the Department's decision. (If as a result of a lack of quorum, the Business Committee is unable to make a determination within the required timeframe; the timeframe shall be extended to a date not more than the fourth Business Committee meeting following the filing of the appeal.) The Business Committee shall consider the appeal based upon the record before the Planning Department and the findings made by the Department. The Business Committee may, at its discretion, receive additional written or oral testimony, or remand the application to the Planning Department, and may call for additional oral and/or written comments prior to making a final decision. If the Business Committee elects to receive additional testimony, and/or remand the

application, it may delay a final decision for an additional thirty (30) days. The Business Committee may extend the time periods set by the Ordinance, for good cause, including but not limited to the need to obtain additional information concerning an application. The Business Committee may issue a permit subject to any limitations or conditions it finds appropriate to achieve the goals of this Ordinance.

(2) Within ten (10) days of its decision, the Business Committee shall notify the applicant indicating the decision, the grounds for the decision and the procedure for petitioning for review of an unfavorable decision to the Chehalis Tribal Court.

(g) Construction work on any structure or use for which a special use permit is required shall be commenced within 1 year of permit issuance and diligently pursued to completion. The permit or special use upon which construction has not commenced within one year or which has been abandoned for six (6) continuous months may be withdrawn by action of the Planning Department.

(h) A petition for review of the denial of a special use permit shall be filed with the Chehalis Tribal Court within 10 days of receipt of the decision.

35.01.070 Application of Regulations

(a) Except as hereinafter provided, no land shall be disturbed nor any building erected, reconstructed or structurally altered except in compliance with the regulations established by this Ordinance and for the district in which the building or land is located, and other applicable tribal ordinances.

(b) Where site development standards are established by this Ordinance no building permit shall be issued for new construction or reconstruction until a site development plan has been approved by the Planning Department.

(c) Where a structure or land use exists at the effective date of adoption of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions, such structure or land use shall be deemed non-conforming and may be continued, so long as it remains otherwise lawful. The non-conforming use of a structure and/or land or any portion thereof shall not be improved, extended, or enlarged after passage of this Ordinance.

(d) A non-conforming use shall be deemed abandoned if it is discontinued or abandoned for a continuous period of 12 months and any subsequent future use of such land or buildings shall be in conformity with the provisions of this Ordinance. Proof of intent to continue a use must be clearly inferable from existing facts.

(e) This Ordinance shall apply to all property located within the exterior boundaries of the Chehalis Reservation notwithstanding the issuance of any allotment or patent and

notwithstanding the trust status of the land involved, and to all trust or restricted fee property within Chehalis Indian Country for which the Tribe is the beneficial owner. This Ordinance shall further apply to all persons who have any interest whatsoever in any real property or any appurtenance to said real property within the boundaries of the Chehalis Reservation, whether said interest is in fee or otherwise, and to all persons within the exterior boundaries of the Chehalis Reservation.

(f) Unless otherwise stated, all land use zones shown on the official zoning map are intended to follow flood plain boundaries, lot lines and road center lines. Where application of the rules above leaves a reasonable doubt as to the boundaries between two land use zones the regulations of the more restrictive zone shall govern the entire area in question.

35.01.080 Administration and Enforcement.

(a) The Chehalis Planning Department shall administer and enforce this Ordinance. If the Department finds that any of the provisions of this Ordinance are being violated, it shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

(b) No oversight or dereliction on the part of the Planning Department or any official or employee of the Chehalis Tribe vested with authority or duty to issue permits or licenses shall legalize, waive, or excuse the violation of any of the provisions of this Ordinance. No permit or license for any use, building, manufactured home, or other structure or use shall be issued if the same would conflict with any provision of this Ordinance or any other regulations in effect referring to this Ordinance. No permit or license shall legalize, authorize, waive and excuse the violation of any of the provisions of this Ordinance.

35.01.090 Violations.

(a) It shall be unlawful for any person, corporation, firm, or other entity to use, erect, construct, move, alter, or attempt to use erect, construct, move or alter any real property, building, mobile home, trailer, or structure in violation of this Ordinance, and the same are hereby declared public nuisances.

(b) The Chehalis Tribe may bring an action in the Chehalis Tribal Court to halt, abate, or modify the construction of any building structure or use of any real property which is in violation of this Ordinance. Any such action may in addition seek damages, and/or restoration of the property.

(c) In addition to all other penalties, any person, firm, or Corporation knowingly violating this ordinance shall be subject to a civil penalty of not more than \$5000.00 per day for each violation, and seizure and forfeiture as contraband pursuant to the procedures of the Chehalis Tribal Forfeiture Ordinance of any property used in connection with such violation. Each day that the property remains in violation shall be considered a

separate violation of this Ordinance.

35.01.0100 Judicial Review.

- (a) The Chehalis Tribal Court shall have exclusive jurisdiction of all actions arising under this Ordinance.
- (b) A petition for review of a denial of a special use permit shall be filed with the Chehalis Tribal Court within 10 days of receipt of the decision from the Business Committee. A petition for review of any other action taken under this Ordinance shall be filed within 30 days of the date such action becomes final. The petition shall be served within 5 days of filing.
- (c) The Chehalis Tribal Court, when reviewing a final action of the Business Committee, shall consider only whether the action was clearly erroneous and wholly without factual basis such as to be a denial of protections guaranteed by the Indian Civil Rights Act.

35.01.110 Sovereign Immunity.

- (a) Nothing in this ordinance shall be deemed as a waiver of the sovereign immunity of the Confederated Tribes of the Chehalis Reservation authorizing suit against the Tribe in any court other than the Chehalis Tribal Court, nor shall it be deemed as authorizing a suit for damages against the Tribe in any action arising under this ordinance, unless the Business Committee by specific, express, and unequivocal legislation should authorize such an action for damages.

35.01.120 Severability.

- (a) Should any word, section, clause, paragraph, sentence, or provision of this Ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other part of this ordinance, which can be given effect without such invalid parts.

35.01.130 Effective Date.

- (a) This Ordinance will be effective upon adoption by the Business Committee.