

# **Chehalis Permitting Ordinance**

## **Chapter 1 Findings, Purpose and Goals**

- 1.01 Findings
- 1.02 Purpose
- 1.03 Goals

## **Chapter 2 Definitions**

- 2.01 Definitions
- 2.02 Time Limit Exceptions

## **Chapter 3 Permits Required**

- 3.01 Permits Required for Certain Activities
- 3.02 Exceptions to Permit Requirement
- 3.03 “Grandfathered” Activities
- 3.04 Permit Application, Chehalis Permitting Checklist
- 3.05 Filing

## **Chapter 4 Review of Application**

- 4.01 Review of Permit Application and Checklist
- 4.02 Initial Notice to Applicant
- 4.03 Decision of Planner-Notice to Community

## **Chapter 5 Environmental Review**

- 5.01 Environmental Review - Generally
- 5.02 Significantly Affecting the Environment
- 5.03 Finding of No Significant Impact – FONSI
- 5.04 Comment Period for FONSI
- 5.05 Business Committee Decision on FONSI
- 5.06 Conditional Permit
- 5.07 Business Committee Decision
- 5.08 Basis for Decisions to Approve, Deny, or Condition Permit

## **Chapter 6 Appeal, Rehearing**

- 6.01 Appeal
- 6.02 Request for Rehearing
- 6.03 Notice of Appeal or Request for Rehearing - Timing
- 6.04 Notice of Appeal or Rehearing - Content
- 6.05 Scheduling of Hearing - Notice
- 6.06 Hearing
- 6.07 Decision of Business Committee on Appeal or Rehearing
- 6.08 Appeals to Tribal Court

## **Chapter 7 Archaeological or Historical Sites**

- 7.01 Purpose
- 7.02 Policies Regarding Archaeological and Historic Sites

## **Chapter 8 Standards**

- 8.01 General Standards

**Chapter 9 Enforcement Penalties**

- 9.01 Failure to Obtain and Comply with Permit
- 9.02 Notice of Violation
- 9.03 Civil Penalty
- 9.04 Appeal from Penalty
- 9.05 Enforcement of Penalty in Court
- 9.06 Money Damages for Violation

**Chapter 10 Sovereign Immunity, Severability**

- 10.01 Sovereign Immunity
- 10.02 Severability

# Chehalis Permitting Ordinance

## Chapter 1 Findings, Goal and Objectives

1.01 Findings. The Chehalis Business Committee makes the following findings with regard to this Act:

- a) The Confederated Tribes of the Chehalis Reservation was established for the exclusive and permanent use of the Chehalis Indian Tribe.
- b) The Chehalis Tribe has the jurisdiction and the duty to protect the quality of the environment within the boundaries of the Chehalis Indian Reservation.
- c) The Chehalis Reservation is 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.
- d) The Chehalis Reservation contains ecologically sensitive lands, culturally sensitive historic and archaeological sites, and the Black and Chehalis Rivers. Any action adversely affecting these and all areas within the Reservation ecosystem adversely affects the Chehalis Indian Tribe.
- e) The Chehalis Business Committee concurs with federal legislation and policies that stress environmental protection such as the National Environmental Protection Act, Coastal Zone Management Act, Clean Air Act and Clean Water Act.

1.02 Goal. This Act is adopted to protect the environment and lands under the jurisdiction of the Chehalis Indian Tribe for the enjoyment and use of present and future generations of Chehalis tribal community members.

1.03 Objectives. The Business Committee intends to further the following objectives in adopting this Act:

- a) To protect the natural resources of the Chehalis Reservation from contamination, pollution and other degradation;
- b) To protect and enhance the habitat of all types of fish, forestry and wildlife resources, particularly the Chehalis River Basin and associated habitat that are critical components of the ecosystem that support fish resources;
- c) To minimize the adverse impacts that would result from locating developments in environmentally sensitive areas;

d) To preserve the open, rural environment that has been traditional for Chehalis Indians; and

e) To allow sufficient development within this natural environment to enable the development of housing, public services and employment for the Chehalis tribal community.

## **Chapter 2 Definitions**

2.01 Definitions. The words below shall have the meaning set forth in this chapter when they appear in this Act.

- a) "Construction" means any on-site activity that is directly related to building or modifying a structure. It does not include minor repairs existing structures.
- b) "Floodplain" means those lowlands adjoining the channel of a river, stream, or other body of water that have historically been or may reasonably be expected to be inundated by floodwater. Specifically, the term refers to the areas inundated by the 100 year flood event of 1996, and identified as "flood hazard areas" by the Federal Emergency Management Agency (FEMA) under the auspices of the National Flood Insurance Program (NFIP).
- c) "Normal public use" means fishing, boating, swimming, and general recreation, by persons with a legal right to engage in those activities.
- d) "Proposed activity" and "activity" mean a development, project, construction, or other action.
- e) "Chehalis tribal community" means all enrolled members of the Chehalis Indian Tribe regardless of residence.
- f) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water. The term structure includes roads.
- g) "Business Committee" means the governing body of the Chehalis Indian Tribe as constituted and empowered under the Constitution of the Confederated Tribes of the Chehalis Reservation.
- h) "Buffer" means an undisturbed area of land adjacent to a critical area that protects the functions and values of the critical area.
- i) "Wetlands" or "wetland areas" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following attributes: (a) At least periodically, the land supports predominantly hydrophytes; (b) the substrate is predominantly undrained hydric soil; and (c) the substrate is nonsoils and is saturated with water or covered by shallow water at some time during the growing season of each year.

2.02 Time Limits-Exceptions. Time limits imposed on the Business Committee in this Act are

guidelines. Postponements for lack of a quorum shall have no consequence except a delay in the process. Time limits throughout the Act shall be construed in a manner which accomplishes the goals of the Act.

### **Chapter 3 Permits Required**

**3.01 Permits Required for Certain Activities.** All persons conducting any of the following activities within the boundaries of the Chehalis Indian Reservation shall be required to obtain a permit from the Chehalis Indian Tribe:

- a) Preparation of a site for the construction of a building or area for purpose of human habitation, business use, or public use including design and installation of septic systems;
- b) The construction of any new structure or construction that alters the exterior of an existing structure;
- c) Road construction or repair and right of way maintenance;
- e) Construction or repair of culverts and drainage ditches;
- f) Construction of any water or flood related project;
- g) Any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands within the Chehalis Indian Reservation; and
- j) Dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; diking; riprapping; or driving of piling.
- k) Timber harvesting;
- l) Spraying or other application of pesticides and herbicides, except for use by single family residences;
- m) Clearing and grading.

**3.02 Exceptions to Permit Requirement.** The following activities shall not require a permit under this Act:

- a) Residential home improvements, such as painting, recarpeting and minor interior renovations;
- b) Construction of sheds or smokehouses, which are unattached and accessory to existing residential or farm use;
- c) Business conducted in the home except where construction is required
- d) Fireworks stands licensed by the Chehalis Indian Tribe

**3.03 “Grandfathered” Activities.** Structures in existence prior to the adoption of this Act are exempt from the permit requirements of this Act. Modifications to such structures made after the date of adoption of this Act, and which fall under section 3.01 above, are subject to permitting as required by this Act.

**3.04 Permit Application and Permitting Checklist.** Any person requiring a permit under section

3.01 shall obtain and complete a Chehalis Permitting Checklist form from the Chehalis Department of Planning.

3.05 Filing. The completed permit application and environmental checklist shall be filed with the Chehalis Department of Planning.

3.06 Filing Fee. The permit application shall be accompanied by a \$25.00 processing fee. Projects initiated by the Chehalis Indian Tribe for the community's benefit may request a processing fee waiver.

## **Chapter 4 Review of Application**

4.01 Review of Permit Application and Checklist. The permit application and environmental checklist shall be initially reviewed by the Planning Director who shall make a recommendation to the Business Committee to approve, deny or condition the permit. Activities requiring a permit shall be reviewed and decided upon by the Business Committee as soon as practicable. The Director and the Business Committee may request assistance from appropriate technical personnel in conducting the review. The review process shall consist of the following determinations.

- a) *Is there sufficient information in the application?* Does the permit application and environmental checklist contain adequate information on which to base a decision to approve or deny the permit or to allow a conditional use? If there is not enough information, a personal meeting with the applicant shall be required.
  
- b) *Are the goals and purpose of the Act met?* Does the proposed activity conform to the goals (Sec. 1.03) and purpose (Sec. 1.02) of this Act; and
  
- c) *Have the environmental review criteria been met?* Does the proposed activity meets the environmental review criteria under Chapter 5 of this Act; and
  
- d) *Are there archaeological issues to be addressed?* Does the proposed activity adequately address archaeological and historical site concerns and is it compatible with the policies for such sites under Chapter 7 of this Act; and
  
- e) *Are the standards of the Act met?* Does the proposed activity conform to standards set forth for that type of activity under Chapter 8 of this Act?

4.02 Initial Notice to Applicant. Within 30 calendar days from the date a fully completed application and permitting checklist are received, the Planning Department shall notify the applicant of the status of the permit as follows:

- a) The applicant must attend a meeting with the Department staff to clarify or complete information required by the permit application

- or checklist;
- b) The application is being recommended for approval and a permit may be issued following Business Committee review and approval. (This determination would be based on a finding of no significant impact);
  - c) The application is being recommended for approval subject to conditions and a conditional permit may be issued following Business Committee review and approval;
  - d) The permit is being recommended for denial for the reasons listed in the notice.

If additional time is needed by the Planning Department to make the required determinations and recommendations, the applicant shall be so notified.

4.03 Determination and Recommendation of the Director. The Director shall make the determination and base the recommendation to approve, deny, or condition a permit on the criteria in Section 6.02 of this Act. The permit application and recommendation of the Director shall be placed on the agenda of the next regularly scheduled meeting of the Business Committee.

## **Chapter 5 Environmental Review**

5 Environmental Review - Generally. The Planning Department shall review the applicant's application permitting checklist for the purpose of determining whether the proposed activity has an environmental impact inclusive of proximity to the Chehalis or Black Rivers, location within an area prone to flooding, surface or groundwater withdrawals, water discharge, wastewater discharge, alteration or loss of natural habitat, water runoff, removal or import of fill, exposure to toxic materials, risk of spill or production or movement of hazardous waste, or above normal noise level shall. If such an impact is identified, the application shall be reviewed by the Director of Natural Resources.

5.01 Significantly Affecting the Environment. The determination of whether an activity will significantly affect the environment shall be made in the context of Chehalis tribal culture and values. Factors to be taken into consideration in evaluating an application for a permit for significant effects on the environment include:

1. The degree to which the proposed activity will adversely affect the quantity and/or quality of the fish and shellfish resources of the Tribe;
2. Unique or sensitive characterization of the geographic or hydrologic area in which the proposed activity will take place;
3. The degree to which the action may adversely affect an endangered or threatened species or its habitat;
4. Whether the proposed activity may cause loss or destruction of cultural, historical, or scientific resources;
5. The degree to which the proposed activity affects the health and safety of the Chehalis tribal community;
6. The degree to which the effects of the proposed activity are uncertain or involve

- unique or unknown risks;
7. The degree to which the proposed activity may establish a precedent for future actions with significant effects;
  8. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. If it is reasonable to anticipate a cumulatively significant impact on the environment, the activity is significant;
  9. Whether the action threatens a violation of federal, state, or local law or requirement or interlocal cooperation agreement, imposed for the protection of the environment, to which the Chehalis Tribe is a party.
  10. Whether the action would violate the Constitution of the Chehalis Indian Tribe or any other ordinance or policy of the Tribe.

5.03 Finding of No Significant Impact. If the Department determines that the proposed project will not have a significant effect on the environment, based on a review of the permitting checklist, the applicant conference, if any, and the recommendations of the Department of Natural Resources, a finding of no significant impact (FONSI) shall be issued with the permit.

5.05 Business Committee Decision on FONSI. The Department of Planning shall then complete the review of the permit application, and forward the permit and FONSI to the Business Committee with their recommendation for approval. The Business Committee shall review these materials at the next regularly scheduled meeting. The Business Committee may approve the permit, or order a conditional permit be issued, or it may disapprove it and require the applicant to do an environmental impact statement.

5.06 Conditional Permits. A conditional permit may be issued when a proposed activity substantially, but not entirely, meets the requirement set forth in Section 4.01 and the activity could be conducted in harmony with the Tribe's purpose and goals under this Act if certain acts or omissions are performed by the applicant. The permit is issued in the standard manner, subject to those conditions and is revocable if those conditions are not met by the applicant. Approval of a conditional permit is discretionary.

5.07 Business Committee Decision. The Business Committee shall decide whether to grant or deny the issuance of the permit or to issue a conditional permit. The Business Committee shall give notice of its decision to the applicant within 30 days of the public hearing. The Business Committee shall post a notice to the Chehalis Tribal Community of its decision to approve, deny, or condition a permit on the same day the notice is given to the applicant. The notice shall be posted at the Chehalis Tribal Center for a period of fifteen (15) days. The notice shall have the date of posting written on it.

5.08 Basis for Decisions to Approve, Deny or Condition Permit. The decision to grant a permit shall be based on whether the proposed activity would be conducted in a way which would result in each of the factors in section 4.01 (b) through (e) being answered affirmatively. Conditional permits shall be approved at the discretion of the Business Committee as set forth under section 5.06.

## Chapter 6 Appeal, Rehearing

6.01 Appeal, Request for Reconsideration. An applicant may appeal the decision to deny a permit, requesting reconsideration to the Director of Planning of the decision to deny a permit. Requests for such review shall be made in the same manner as a request for reconsideration or notice of appeal.

6.02 Notice of Appeal or Request for Reconsideration - Timing.

Any notice of appeal or request for reconsideration under section 6.01 must be filed no later than 15 calendar days from the date the applicant received notice that his or her permit was denied. The appeal or request for reconsideration shall be made in writing and shall be served by certified mail, return receipt requested, on the Secretary of the Chehalis Business Committee and on the Director of Planning.

6.03 Notice of Appeal or Request for Reconsideration - Content. The notice of appeal or request for reconsideration shall contain a brief description of the proposed project and information including who made the original decision and on what date, the specific reasons for the appeal or request for rehearing, and what outcome the person is asking for. The notice shall list the names and addresses of any person who may have material information to the project. Such persons shall provide a telephone number and address where he or she can be reached for notices.

6.04 Stay Pending Appeal or Rehearing. No activity may proceed until all review under this chapter, including judicial review, is concluded.

6.05 Scheduling of Reconsideration – Notice. The Department of Planning shall schedule a review no fewer than 7 and no more than 45 calendar days from the date it receives the notice of appeal or request for reconsideration, unless the applicant and the Business Committee agree otherwise. The Department shall mail or deliver to the applicant a notice of reconsideration and shall post a notice to the Chehalis tribal community in the places specified under section 5.15.

6.06 Reconsideration. The person requesting the reconsideration or appeal shall appear personally before the Business Committee and state why and how the decision should be changed. The Business Committee may hear the testimony of witnesses on both sides of the issue, who have information relevant to the appeal or rehearing. The hearing shall be tape recorded where practicable.

6.07 Decision of Business Committee on Appeal or Reconsideration. The Business Committee may affirm, reverse or modify the decision being considered.

6.08 Appeals to Tribal Court. Any person who claims, in good faith, that the Chehalis Business Committee made a mistake in interpreting this Act or made a mistake in procedure under this Act that affected the person's rights, shall have a right to appeal from the Business Committee's decision under section 6.07. The appeal shall be heard by the Chehalis Tribal Court. The Tribal Court may reverse the Business Committee decision only if a) the decision

was clearly erroneous in view of the entire record as submitted and in light of the policies and goals of the Act or b) the decision violated the Constitution of the Confederated Tribes of the Chehalis Reservation.

## **Chapter 7 Archaeological or Historical Sites**

7.01 Purpose. This chapter establishes policies and procedures to protect archaeological and historic sites. The Chehalis Reservation has been a place of habitation and use by Chehalis peoples for thousands of years. This long history means that the Reservation has many places, some no longer discernible to the untrained eye, that were once sites of homes, villages, hunting and fishing camps, ceremonies, and other uses. The historical and cultural information obtainable from a professional archaeological examination of such sites is an invaluable and irreplaceable source of tribal history. Violation of the following policies or procedures resulting in destruction of or damage to this heritage is considered a serious offense and the maximum sanctions allowable will be imposed.

### 7.02 Policies Regarding Archaeological and Historic Sites.

- a) Any application for a permit under this Act may be required to be reviewed by professional archaeologist to determine whether the proposal poses any danger to known archaeological sites. A literature search shall be required in addition to a check of known or *registered* sites. The expense of such review shall be borne by the applicant.
- b) If evidence of an archaeological *site* is unearthed during the construction of a project for which a permit has been issued, the project developer and/or the persons involved in construction must cease work immediately and notify the Department of Planning.
- c) The Chehalis Tribe reserves the right to conduct its own archaeological inspection of any construction, earthmoving, or excavation work on the Reservation.
- d) The Tribe hereby reserves the right to halt construction of a project for up to 120 days if it deems that an archaeological site of importance to the Tribe may have been unearthed. During the 120 days, the Tribe must begin professional examination of the site to determine the significance. Extensions of the 120 day period will be allowed if needed to complete the work. The Tribe may condition the permit for the project after the discovery of the site and require a professional archaeological excavation or require modification of the activity to preserve the site. The expense of such examination and any excavation or modification of the activity shall be borne by the applicant
- e) Applicants may be required to post a deposit with the Tribe of up to \$5,000 to insure that notification of any archaeological evidence is made to the Tribe. The deposit is fully refundable if no archaeological site is unearthed, but will be forfeited if violation of these policies occurs.

## Chapter 8 Standards

**8.01** General Standards. The following general standards apply to proposed activities under this Act:

- a) Natural character preserved. All developments shall be consistent with the natural characteristics and ecological systems of the Reservation. Developments in sensitive areas, such as steeply sloped land, flood plains or wetlands, if allowed, shall have only a minimum level of impact upon the functioning of the natural systems.
- b) Natural buffers. There shall be undisturbed, natural, vegetated buffers left adjacent to rivers, streams, and wetlands. No construction, accessory uses, septic tanks, or agriculture is allowed in the buffer. No timber harvesting is permitted in the buffer, except that trees which have naturally fallen across the waterway may be removed, provided prior authorization is obtained from the Tribe. Buffers adjacent to a stream or river shall be left on both sides of the waterway.
- c) No interference with fishing rights. No activity shall occur in a manner which causes interference with the exercise of fishing rights. No activity shall block or impede the free movement of fish.
- d) Water quality/fish and wildlife quality. Activities shall be located, designed, constructed and operated in a manner that minimizes adverse affects on fish, wildlife, water quality and existing shore and stream processes.
- e) Fish wastes. Discharge of wastes from fish and shellfish processing into water bodies shall, at minimum, meet federal standards for those activities.
- f) Erosion control. An erosion control plan must be approved prior to issuance of a permit under this Act for any activity which would pose a risk of erosion during construction or afterward. No earth or debris resulting from the activity shall be allowed to enter streams or lakes. No permitted activity shall contribute to foundation instability or mass soil movement.
- g) Use of fill. All fill material must be approved in advance. If an activity uses fill material to accommodate the activity, the Tribe may required a licensed engineer to certify that the fill will not alter or prohibit the natural flow of surface water or groundwater, or present a geologic hazard. There shall be no excavation or filling of stream channels or alteration of stream courses unless required for a project to enhance the biological productivity of the aquatic environment.
- h) Clearing and grading. All clearing and grading activities must meet the standards of the 1997 UBC. (Amended by Resolution to meet standards of 2003 ICC.)
- i) Herbicides and pesticides. Application of herbicides and pesticides is prohibited except for conditional permits that may be given for agricultural and residential application when no reasonable alternative is available.

## **Chapter 9 Enforcement, Penalties**

**9.01 Failure to Obtain a Permit.** Any person who fails to obtain a permit required under this Act shall be issued a notice of violation that may include an order to cease and desist (stop work order).

**9.02 Failure to Comply with Permit.** Any person who fails to comply with the terms of a permit under this Act shall be issued a written warning to comply by the Business Committee that may include an order to cease and desist (stop work order).

**9.03 Notice of Violation.** The notice of violation shall describe the specific violation, the amount of the monetary penalty if any and, if applicable, shall order the violation to cease and desist or require corrective action to be taken within a specific and reasonable time. The notice shall be given to the person directly by the Director of Public Safety or by certified mail with return receipt requested.

**9.04 Civil Penalty.** The civil penalty for failure to conform to the terms of a permit or for proceeding with an activity without a permit, as required under this Act, is a fine not to exceed five thousand dollars for each violation. Each permit violation for each day of community activity without a required permit shall constitute a separate violation. Each permit violation or each day of continued activity without a required permit shall constitute a separate violation.

**9.05 Appeal from Penalty.** Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the Business Committee to request that the penalty be reduced. The person must show good faith in complying with the Act since the time the notice was received in order to receive a reduced penalty. The decision of the Tribal Court is final.

**9.06 Enforcement of Penalty in Court.** The Tribe may enforce its notice to cease and desist and its assessment of a penalty in the Tribal Court. The Tribe may request the court to enter an injunction against the continued activity, to order payment of the fine, and to order other remedies where appropriate. Failure of any person to abide by the lawful order of The Chehalis tribal Court is punishable by civil and criminal contempt of court proceedings.

**9.07. Interference with an Inspector Conducting His/Her Authorized Duties.** Interference with an Inspector attempting to conduct his/her authorized duties shall constitute a violation of Chehalis Tribe safety standards and shall be handled in accordance with the Notice of Violation process described above. Such interference shall be subject to all remedies available for a notice of violation. Each instance of interference shall constitute a separate violation. (Amended, April 24, 2007).

## **Sovereign Immunity, Severability**

**10.01 Sovereign Immunity.** The sovereign immunity of the Confederated Tribes of the Chehalis Reservation is no manner waived by this Act. The employees and appointees of the Tribe, the

members of the Business Committee and the personnel of the Chehalis Tribal Court are covered by the sovereign immunity of the Tribe. No person named above shall be libel for his or her actions or failure to act under this Act.

10.02 Severability. If any provision of this Act or its application to any person, entity or circumstance is held to invalid, the remainder of this Act shall not be affected.