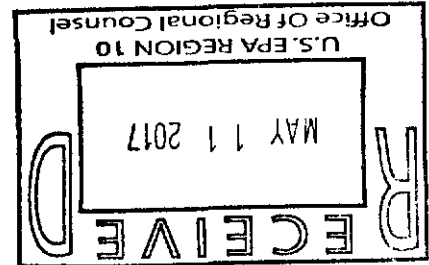




Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211



May 9, 2017

Nicholas Vidargas
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 10
Mail Stop: ORC-113
Seattle, WA 98101

RE: Quinault Indian Nation's Request to Compact for Timber Harvest Excise Tax

Dear Mr. Vidargas:

The Quinault Indian Nation ("QIN") is pleased to submit the following updated information in application for treatment in the same manner as a state ("TAS") pursuant to Section 518 of the Clean Water Act. This application was approved for submission by Resolution No. 12-177-91 of the Quinault Business Committee on December 10, 2012 (attached).

This TAS application and its Exhibits A through M update the TAS application the QIN submitted December 21, 2012, and clarified by letter from the QIN dated June 10, 2014, in light of the EPA's May 16, 2016, final interpretive rule Revised Interpretation of Clean Water Act Tribal Provision.

If you have any questions, please contact Senior Assistant Attorney General, Karen Allston, at kallston@quinault.org. Thank you for your consideration of this application.

Sincerely,

A handwritten signature in black ink, appearing to be "F.R. Sharp".

Fawn R. Sharp, President
Quinault Indian Nation

Enc.



Quinault Indian Nation

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QUINAULT BUSINESS COMMITTEE

RESOLUTION NO. 12-177-91

WHEREAS, the Quinault Business Committee is the recognized governing body of the Quinault Indian Nation under the authority of the Quinault Indian Nation's Constitution adopted by the Quinault General Council on March 22nd, 1975; and

WHEREAS, the Constitution of the Quinault Indian Nation authorizes the Quinault Business Committee to govern all people, resources, land, and water under the jurisdiction of the Quinault Indian Nation (QIN); and

WHEREAS, Quinault Indian Nation finds in its Title 61 that protection of the purity of its waters is a Nation policy; and

WHEREAS, the Quinault Natural Resources Division of the Quinault Indian Nation has a Water Quality Program with capacity to develop, maintain, and enforce water quality standards for surface waters within the Quinault Reservation, and issue 401 certifications for surface waters within the Quinault Reservation ; and

WHEREAS, the Clean Water Act Section 518 authorizes the application by Indian tribes for treatment in the same manner as a state for purposes of assuming jurisdiction to administer water quality standards and 401 certifications; and

WHEREAS, the QBC desires to assume responsibility for issuing, maintaining and enforcing water quality standards for surface waters within its Reservation, and for 401 certifications for surface water bodies within its Reservation,

NOW THEREFORE, BE IT RESOLVED, that the Quinault Business Committee approves the attached application to the Environmental Protection Agency for treatment in the same manner as a state pursuant to Section 518 of the Clean Water Act.

Fawn R. Sharp, President
Quinault Indian Nation

CERTIFICATION

As Secretary of the Quinault Business Committee, I hereby certify that the foregoing resolution was duly enacted by the Quinault Business Committee at a regular meeting held on December 10, 2012 by a vote of 4 for, 0 against, 2 abstaining.

Latosha Underwood, Secretary
Quinault Business Committee

**APPLICATION BY THE QUINAULT INDIAN NATION
FOR TREATMENT IN THE SAME MANNER AS A STATE UNDER
THE CLEAN WATER ACT (33 U.S.C. §§ 1251 *et seq.*)
FOR WATER QUALITY STANDARDS AND WATER QUALITY CERTIFICATION**

The Quinault Indian Nation (“QIN”) submits the following updated information in application for treatment in the same manner as a state (“TAS”) pursuant to Section 518 of the Clean Water Act. This information supplements information QIN submitted in 2000 in support of its application for TAS under Section 319, which was approved by letter dated January 26, 2001, from the EPA. In light of the May 16, 2016, final interpretive rule Revised Interpretation of Clean Water Act Tribal Provision, this submission updates the application submitted December 21, 2012, and clarified by letter from the QIN dated June 10, 2014.

The QIN requests TAS for water quality standards and 401 certification, and provides the following documentation as required by 40 C.F.R. § 131.8:

1. FEDERAL RECOGNITION (40 CFR 131.8(a)(1) and (b)(1))

QIN is a federally-recognized Indian tribe, recognized by the Secretary of Interior. See the Federal Register notice, 82 FR 4915, published January 17, 2017, and attached as Exhibit A.

2. AUTHORITY OVER A FEDERAL INDIAN RESERVATION (40 CFR 131.8(a)(1) and 131.3(d))

The QIN exercises governmental authority over a federal Indian reservation—the Quinault Indian Reservation located on the Olympic Peninsula in Western Washington. This includes lands held by the United States in trust for the QIN and its members that are not located within the boundaries of the Quinault Indian Reservation. See section 4 of this application for more information about the description of the QIN’s Reservation lands.

3. TRIBAL GOVERNANCE (40 CFR 131.8(a)(2) and (b)(2))

A. QIN Form of Government Pursuant to 1975 Constitution.

QIN is a government organized pursuant to a Constitution adopted March 22, 1975, amended January 16, 2011, and March 31, 2012. Attached as Exhibit B. Through its Constitution, the QIN asserts its authority and jurisdiction over all “lands, resources and waters” within the boundaries of its Reservation, “all persons acting within the boundaries of those reserved lands or waters,” all lands or waters outside the Reservation that are held in trust by the United States in trust for the QIN or any of its enrolled members, and “offshore marine waters for a distance concurrent with the jurisdiction of the United States.” *Id.* at Art. I, Section 1.

The Constitution of the Quinault Indian Nation authorizes the establishment of an elected 11-member Quinault Business Committee (“QBC”) to serve as the governing body of the QIN membership. The Constitution authorizes the QBC to assert executive powers that include, but

are not limited to entering agreements, enforcing the laws of the QIN, levying taxes, managing all tribally owned lands and interests, engaging in business, borrowing money, managing the natural resources of the QIN, and condemning land for public purposes. The QBC meets bi-monthly to conduct the governmental functions of the QIN pursuant to Bylaws amended July 14, 2008. Attached as Exhibit C.

In addition to its Constitution, which provides evidence of the QIN's governmental authority and organization (see above), the QIN was a signatory to the Treaty of Olympia (signed on the Quinai-elt River July 1, 1855, signed January 25, 1856, by Governor Stevens, ratified by Congress March 8, 1859, proclaimed law April 11, 1859), which authorized the creation of the Quinault Indian Reservation. Attached as Exhibit D.

B. QIN Governmental Functions Include Exercise of Police Powers, Taxation and Eminent Domain.

The many duties and authorities of the QBC are enumerated in Article V of the Constitution and include legislative and executive powers. In its legislative capacity, the QBC has adopted various Codes that assert the police powers of the QIN relevant to the protection of its land, water and other natural resources, including, but not limited to: a Natural Resources Code, a Beach Lands Code, a Land Use and Development Code, codes related to the function of its Court system, Civil and Criminal Procedure Codes, and a Public Nuisance Code. Attached as Exhibit E.

The QIN currently employs over 400 permanent employees and dozens of seasonal/temporary employees in its governmental administration, which is akin to a typical local government. Its administrative structure includes, but is not limited to: an Office of Attorney General; the Quinault Tribal Court; the Quinault Public Safety (Police Department and Fire Department); Roger Saux Health Clinic of Taholah and the Charlotte Kalama Health Clinic of Queets; Division of Natural Resources, which includes the Fisheries Department, Forestry Department, and Environmental Protection (including the Water Quality Program, Air Quality Program, Wildlife Program); the Community Services Division, which includes the Planning Department, Public Works, Roads, Utilities, and Facilities Management. Additionally, the QIN has an extensive Finance administrative structure, including, but not limited to, a Grants and Contracts Office, Property Management, Payroll, Revenue, and Accounting, all overseen by a Controller who reports to a Chief Financial Officer.

C. QIN Previously Granted TAS Status for Nonpoint Source Management and Air Quality.

In 2001, the QIN was granted Treatment in a manner similar to a State ("TAS") status for its Nonpoint Source Management Program (under Section 319 of the Clean Water Act) and Assessment of Waters (Section 106 of the Clean Water Act). Attached as Exhibit F. Additionally, the QIN has been granted TAS status for air quality, and has assumed partial delegation of authority to administer Federal Air Rules on the Quinault Indian Reservation (see attached Exhibit G). The QIN has an air quality program within its Department of Environmental

Protection that includes one staff position, and receives annual funding from the EPA to administer that program.

4. MANAGEMENT AND PROTECTION OF WATER RESOURCES OF THE RESERVATION (40 CFR 131.8(a)(3) and (b)(3))

The Quinault Indian Reservation is comprised of approximately 207,190 acres of mostly forested land, including a mostly undeveloped coastline of approximately 26 miles. There are approximately 1,292 miles of rivers and streams within the boundaries of the Reservation, as well as 11,543 acres of wetlands (including riverine), over all of which the QIN claims jurisdiction. Lake Quinault comprises approximately 3,609 acres of water, also within the Reservation.

The Reservation was originally established by Executive Order dated November 4, 1873 (I Kapp. 923) (see section 3.A. below for legal description), and increased by 11,905 acres, (referred to as the North Boundary Area, which was inadvertently excluded due to a survey error) in 1988 by Act of Congress (P.L. 100-638) (see Exhibit H for deed with full legal description). The QIN currently owns approximately 69,338 acres (in fee and trust status) of the Reservation, enrolled members own approximately 114,612 acres either in fee or in trust, and non-Indians own approximately 23,239 acres in fee. Map attached as Exhibit I. There are five residential areas within the Reservation: the Villages of Queets, Taholah and Amanda Park, Santiago Subdivision, and Qui-nai-elt Village. Amanda Park, though within the Reservation, is an unincorporated residential area comprised mostly of fee parcels owned by non-Indians. Additionally, there are numerous individual parcels along the 26 miles of Reservation coastline that are owned in fee by non-Indians and used primarily as vacation or weekend cabins.

- The water quality standards and water quality certification programs to be administered by the QIN will assist in managing and protecting water resources within the borders of the QIN's Reservation. The boundaries of the Quinault Indian Reservation for which the QIN is seeking authority to administer the water quality standards and water quality certification programs are identified in the map of the Quinault Indian Reservation, including the rivers, wetlands and other surface waters, Lake Quinault and the Pacific Ocean. Map attached as Exhibit I. The QIN intends to establish water quality standards for all surface water bodies within its Reservation as depicted on this map, including Lake Quinault; the Quinault, Queets, Salmon, Raft, and Moclips Rivers and their tributaries; wetlands; and the Pacific Ocean.

The legal description of the original Reservation was provided in an Executive Order dated November 4, 1873, signed by President U.S. Grant:

Commencing on the Pacific coast at the southwest corner of the present reservation, as established by Mr. Smith in his survey under contract with Superintendent Miller, dated September 16, 1861; thence due east, and with the line of said survey, 5 miles to the southeast corner of said reserve thus established; thence in a direct line to the most southerly end of Quinaielt Lake; thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Queetshee River and 3

miles above its mouth; thence with the course of said river to a point on the Pacific coast, at low-water mark, a half mile above the mouth of said river; thence southerly, at low-water mark, along the Pacific to the place of beginning.

I Kappler 923. The legal description of the North Boundary Area that was added to the Reservation is voluminous. See attached at Exhibit H.

The Quinault Indian Reservation is surrounded primarily by state and federal lands. Map attached as Exhibit J. Within its boundaries, the QIN has zoned the Reservation, most of which contains standing commercial timber in the "Forestry" zone. Map attached as Exhibit K.

5. TRIBAL LEGAL COUNSEL STATEMENT (40 CFR 131.8(b)(3)(ii))

The QIN's Office of Attorney General provides a memo in support of the QIN's assertion of the establishment of the Quinault Indian Reservation, including discussion about a current legal dispute regarding Lake Quinault, and describing the basis of the QIN's assertion of authority, attached as Exhibit L.

6. TRIBAL CAPABILITY

The QIN is capable of administering effective water quality standards and water quality certification programs, as described below.

A. QIN Has History of Governmental Program Administration.

The overall organization of the QIN's government and experience in managing programs, such as environmental and public health programs, is described herein.

The QIN was one of the first Indian tribes to become self-governing (in 1990) pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. §§ 450 et seq.), by which it received federal funding to implement various programs otherwise provided through the Bureau of Indian Affairs. Specifically, under the ISDEAA, the Nation provides many governmental programs to its enrolled members, including, but not limited to: a police department and jail, a tribal court, a health clinic, tribal trust forestry management, and fisheries management and self-regulatory enforcement.

Additionally, the QIN is a self-regulatory treaty tribe, meaning it was recognized by the federal court to have exclusive jurisdiction to regulate its off-Reservation fisheries. In order to qualify for this distinction, the QIN demonstrated to the court in *U.S. v. Washington* that it has a "well organized tribal government reasonably competent to promulgate and apply off reservation fishing regulations. . ." and that it has qualified and effective and scientific experts and enforcement personnel. *See*, 384 F. Supp. 312, 340-42 (W.D. Wash. 1974). The QIN has retained its status as a self-regulatory Indian tribe since 1974.

Through its Forestry Department and overarching Natural Resources Division, the QIN has managed its own logging operations Reservation-wide since becoming self-governing in 1990. It first implemented a 10-year Forest Management Plan in 2003, covering all aspects of

environmental protection associated with logging on the Reservation, and for which Endangered Species Act-incident take coverage was provided pursuant to a Section 7 consultation and Biological Opinion. The Forest Management Plan was recently updated significantly and re-authorized for another 10-year period. Part of that Plan provides protection of water quality related to logging operations.

B. QIN has Existing Staff to Capably Administer Water Quality Standards and Water Quality Certification Programs.

The responsibilities to establish, review, implement and revise water quality standards, and the responsibilities for conducting water quality certification under Clean Water Act section 401, will be assigned to the QIN Water Quality Program (WQP), located in the Environmental Protection Department in the larger Quinault Division of Natural Resources (QDNR). The WQP has completed day-to-day work relating to QIR waters since the mid-1990s, when it received its first Indian General Assistance Program (IGAP) funding. Presently, the WQP completes work per an annual work plan approved by the EPA and formalized in a Performance Partnership Grant (PPG) contract. QIN work funded by IGAP was expanded in 2000 and 2001 to include Section 106 Clean Water Act (CWA) and Section 319 (CWA) Programs, respectively, also authorized by the EPA.

Experienced staff members are already on board in the WQP and trained to administer the water quality standards and certification programs. The WQP is (and has been for many years) comprised of a Water Quality Section Leader and a Water Quality Technician. The current WQP Water Quality Section Leader, Elyse Clifford, who holds an M.S. from the University of Massachusetts Amherst in Watershed Management, and as of 2017, has six years of experience working in ecological research positions.

Also supporting the WQP are: 1) a Water Quality Technician, Nick Barry, responsible for collecting most monitoring data, maintaining and calibrating monitoring equipment, and providing support to the Water Quality Section Leader; 2) a Wetland Specialist, Greg Eide, who holds an M.S. from Evergreen State College and has six years of relevant experience; and 3) a QIN Fish Habitat Biologist & Hydraulics Officer, Ben Majsterek, who holds a B.S. in Fisheries Resources from the University of Idaho, and has six years of relevant experience. The position descriptions for all WQP staff positions are attached as Exhibit M.

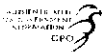
The WQP has access to numerous other QIN technical and administrative professionals in dealing with technical matters and administrative issues. The QDNR is comprised of about 80 to 100 people housed in multiple departments, including Forestry, Fisheries, Environmental Protection, Resource Protection, GIS, Land Management, and other smaller programs. Professional staff in these programs have expertise in forestry, freshwater and marine water fisheries, enforcement, GIS ArcView, land issues, wildlife management, hydraulic and forest practice permits, air quality, and cultural resources. These staff are consulted by the WQP for assistance when needed depending on the nature of any given water quality issue.

Legal support to all QIN divisions is provided by the QIN Office of the Attorney General. Further, the WQP annually solicits, secures, and receives in-kind work and/or equipment support from other QDNR programs to meet EPA's section 106 CWA 5% match requirement.

When necessary, the WQP seeks out external technical assistance from contractors through its competitive solicitation process.

Currently, the WQP has a cooperative project with the USGS to conduct a groundwater baseline assessment on the QIR and establish a regular groundwater monitoring network. Another current project with the USGS aims to determine the longitudinal temperature profile of the Lower Quinault River, in order to identify areas of cold-water refuge for salmonids and other aquatic life. The WQP currently has a contract with the Great Lakes Environmental Center to assist with the logistics of sampling supplies and lab analyses for specialized sampling projects such as fish tissue sampling. More regular lab analyses are processed through a contract with the local Environmental Health Division lab of Grays Harbor County. The Program has also just entered a contract with Ridolfi Inc. to help develop Water Quality Standards for the Quinault Indian Reservation. In past years, the WQP has also utilized contractors to clean up solid waste dumpsites, develop QAPPs, and to maintain and monitor stream gauges.

EXHIBIT A



Applicant: Richard Killion,
Breckenridge, TX; PRT-06382C

Brenda Tapia,
*Program Analyst/Data Administrator, Branch
of Permits, Division of Management
Authority.*

[FR Doc. 2017-00755 Filed 1-13-17; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/
AOA501010.999900253G]

**Land Acquisitions; Craig Tribal
Association, Craig, Alaska**

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of final agency
determination.

SUMMARY: The Principal Deputy
Assistant Secretary—Indian Affairs
made a final agency determination to
acquire 1.08 acres, more or less, of land
in trust for the Craig Tribal Association,
Alaska, for economic development and
other purposes on January 10, 2017.

FOR FURTHER INFORMATION CONTACT:
Helen Riggs, Director, Office of Trust
Services, Bureau of Indian Affairs, MS-
4620 MIB, 1849 C Street NW.,
Washington, DC 20240, telephone (202)
208-5831.

SUPPLEMENTARY INFORMATION: This
notice is published in the exercise of
authority delegated by the Secretary of
the Interior to the Office of the Assistant
Secretary—Indian Affairs by 209
Departmental Manual 8.1, and is
published to comply with the
requirements of 25 CFR 151.12 (c)(2)(ii)
that notice of the decision to acquire
land in trust be promptly provided in
the **Federal Register**.

On January 10, 2017, the Principal
Deputy Assistant Secretary—Indian
Affairs issued a decision to accept
approximately 1.08 acres, more or less,
of land in trust for the Craig Tribal
Association, Alaska, under the authority
of the Indian Reorganization Act of
1934, 25 U.S.C. 465.

The Alaska Regional Director, on
behalf of the Secretary of the Interior,
will immediately acquire title in the
name of the United States of America in
trust for the Craig Tribal Association
upon fulfillment of Departmental
requirements.

Legal Description

The 1.08 acres, more or less, are
located in the city of Craig, State of
Alaska, and are described as follows:

Lot Q-3, subdivision of the unsubdivided
remainder of Tract Q, U.S. Survey 2327,
according to the plat thereof filed December
7, 1988, as plat No. 88-39, Ketchikan
Recording District, State of Alaska,
containing 1.08 acres.

Dated: January 10, 2017.

Lawrence S. Roberts,
*Principal Deputy Assistant Secretary—Indian
Affairs.*

[FR Doc. 2017-00872 Filed 1-13-17; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/
AOA501010.999900 253G]

**Indian Entities Recognized and Eligible
To Receive Services From the United
States Bureau of Indian Affairs**

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice.

SUMMARY: This notice publishes the
current list of 567 Tribal entities
recognized and eligible for funding and
services from the Bureau of Indian
Affairs (BIA) by virtue of their status as
Indian Tribes. The list is updated from
the notice published on May 4, 2016 (81
FR 26826).

FOR FURTHER INFORMATION CONTACT: Ms.
Laurel Iron Cloud, Bureau of Indian
Affairs, Division of Tribal Government
Services, Mail Stop 4513-MIB, 1849 C
Street NW., Washington, DC 20240.
Telephone number: (202) 513-7641.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to Section
104 of the Act of November 2, 1994
(Pub. L. 103-454; 108 Stat. 4791, 4792),
and in exercise of authority delegated to
the Assistant Secretary—Indian Affairs
under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is an updated list of
federally acknowledged Indian Tribes in
the contiguous 48 states and Alaska, to
reflect various name changes and
corrections.

Amendments to the list include name
changes and name corrections. To aid in
identifying tribal name changes and
corrections, the Tribe's previously listed
or former name is included in
parentheses after the correct current
tribal name. We will continue to list the
Tribe's former or previously listed name
for several years before dropping the
former or previously listed name from
the list.

The listed Indian entities are
acknowledged to have the immunities
and privileges available to federally
recognized Indian Tribes by virtue of

their government-to-government
relationship with the United States as
well as the responsibilities, powers,
limitations, and obligations of such
Tribes. We have continued the practice
of listing the Alaska Native entities
separately solely for the purpose of
facilitating identification of them and
reference to them given the large
number of complex Native names.

Dated: January 10, 2017.

Lawrence S. Roberts,
*Principal Deputy Assistant Secretary—Indian
Affairs.*

**Indian Tribal Entities Within the
Contiguous 48 States Recognized and
Eligible To Receive Services From the
United States Bureau of Indian Affairs**

- Absentee-Shawnee Tribe of Indians of Oklahoma
- Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
- Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona)
- Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)
- Alabama-Quassarte Tribal Town
- Alturas Indian Rancheria, California
- Apache Tribe of Oklahoma
- Arapaho Tribe of the Wind River Reservation, Wyoming
- Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)
- Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
- Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
- Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
- Bay Mills Indian Community, Michigan
- Bear River Band of the Rohnerville Rancheria, California
- Berry Creek Rancheria of Maidu Indians of California
- Big Lagoon Rancheria, California
- Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
- Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
- Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
- Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)

- Blackfoot Tribe of the Blackfoot Indian Reservation of Montana
- Blue Lake Rancheria, California
- Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
- Buena Vista Rancheria of Me-Wuk Indians of California
- Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
- Cabazon Band of Mission Indians, California
- Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
- Caddo Nation of Oklahoma
- Cahto Tribe of the Laytonville Rancheria
- Cahuilla Band of Indians (previously listed as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California)
- California Valley Miwok Tribe, California
- Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
- Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
- Catawba Indian Nation (aka Catawba Tribe of South Carolina)
- Cayuga Nation
- Cedarville Rancheria, California
- Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
- Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
- Cherokee Nation
- Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
- Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
- Chicken Ranch Rancheria of Me-Wuk Indians of California
- Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana)
- Chitimacha Tribe of Louisiana
- Citizen Potawatomi Nation, Oklahoma
- Cloverdale Rancheria of Pomo Indians of California
- Cocopah Tribe of Arizona
- Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
- Cold Springs Rancheria of Mono Indians of California
- Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
- Comanche Nation, Oklahoma
- Confederated Salish and Kootenai Tribes of the Flathead Reservation
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
- Confederated Tribes of the Chehalis Reservation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of the Goshute Reservation, Nevada and Utah
- Confederated Tribes of the Grand Ronde Community of Oregon
- Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
- Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California)
- Coushatta Tribe of Louisiana
- Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
- Cowlitz Indian Tribe
- Coyote Valley Band of Pomo Indians of California
- Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
- Crow Tribe of Montana
- Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)
- Delaware Nation, Oklahoma
- Delaware Tribe of Indians
- Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
- Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
- Eastern Band of Cherokee Indians
- Eastern Shawnee Tribe of Oklahoma
- Eastern Shoshone Tribe of the Wind River Reservation, Wyoming (previously listed as the Shoshone Tribe of the Wind River Reservation, Wyoming)
- Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
- Elk Valley Rancheria, California
- Ely Shoshone Tribe of Nevada
- Enterprise Rancheria of Maidu Indians of California
- Ewiiapaayp Band of Kumeyaay Indians, California
- Federated Indians of Graton Rancheria, California
- Flandreau Santee Sioux Tribe of South Dakota
- Forest County Potawatomi Community, Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
- Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
- Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
- Fort McDowell Yavapai Nation, Arizona
- Fort Mojave Indian Tribe of Arizona, California & Nevada
- Fort Sill Apache Tribe of Oklahoma
- Gila River Indian Community of the Gila River Indian Reservation, Arizona
- Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
- Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
- Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
- Guidiville Rancheria of California
- Habematolel Pomo of Upper Lake, California
- Hannahville Indian Community, Michigan
- Havasupai Tribe of the Havasupai Reservation, Arizona
- Ho-Chunk Nation of Wisconsin
- Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
- Hoop Valley Tribe, California
- Hopi Tribe of Arizona
- Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)
- Houlton Band of Maliseet Indians
- Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
- Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)
- Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
- Ione Band of Miwok Indians of California
- Iowa Tribe of Kansas and Nebraska
- Iowa Tribe of Oklahoma
- Jackson Band of Miwok Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California)
- Jamestown S'Klallam Tribe
- Jamul Indian Village of California
- Jena Band of Choctaw Indians

- Ponca Tribe of Nebraska
- Port Gamble S'Klallam Tribe (previously listed as the Port Gamble Band of S'Klallam Indians)
- Potter Valley Tribe, California
- Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
- Prairie Island Indian Community in the State of Minnesota
- Pueblo of Acoma, New Mexico
- Pueblo of Cochiti, New Mexico
- Pueblo of Isleta, New Mexico
- Pueblo of Jemez, New Mexico
- Pueblo of Laguna, New Mexico
- Pueblo of Nambe, New Mexico
- Pueblo of Picuris, New Mexico
- Pueblo of Pojoaque, New Mexico
- Pueblo of San Felipe, New Mexico
- Pueblo of San Ildefonso, New Mexico
- Pueblo of Sandia, New Mexico
- Pueblo of Santa Ana, New Mexico
- Pueblo of Santa Clara, New Mexico
- Pueblo of Taos, New Mexico
- Pueblo of Tesuque, New Mexico
- Pueblo of Zia, New Mexico
- Puyallup Tribe of the Puyallup Reservation
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
- Quartz Valley Indian Community of the Quartz Valley Reservation of California
- Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
- Quilente Tribe of the Quilente Reservation
- Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
- Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Red Lake Band of Chippewa Indians, Minnesota
- Redding Rancheria, California
- Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
- Reno-Sparks Indian Colony, Nevada
- Resighini Rancheria, California
- Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
- Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California)
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
- Sac & Fox Nation of Missouri in Kansas and Nebraska
- Sac & Fox Nation, Oklahoma
- Sac & Fox Tribe of the Mississippi in Iowa
- Saginaw Chippewa Indian Tribe of Michigan
- Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
- Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
- San Carlos Apache Tribe of the San Carlos Reservation, Arizona
- San Juan Southern Paiute Tribe of Arizona
- San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation)
- San Pasqual Band of Diegueno Mission Indians of California
- Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
- Santa Rosa Indian Community of the Santa Rosa Rancheria, California
- Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
- Santee Sioux Nation, Nebraska
- Sauk-Suiattle Indian Tribe
- Sault Ste. Marie Tribe of Chippewa Indians, Michigan
- Scotts Valley Band of Pomo Indians of California
- Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
- Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
- Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)
- Shakopee Mdewakanton Sioux Community of Minnesota
- Shawnee Tribe
- Sherwood Valley Rancheria of Pomo Indians of California
- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
- Shinnecock Indian Nation
- Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
- Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
- Skull Valley Band of Goshute Indians of Utah
- Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)
- Soboba Band of Luiseno Indians, California
- Sokaogon Chippewa Community, Wisconsin
- Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
- Spirit Lake Tribe, North Dakota
- Spokane Tribe of the Spokane Reservation
- Squaxin Island Tribe of the Squaxin Island Reservation
- St. Croix Chippewa Indians of Wisconsin
- Standing Rock Sioux Tribe of North & South Dakota
- Stillaguamish Tribe of Indians of Washington (previously listed as the Stillagnamish Tribe of Washington)
- Stockbridge Munsee Community, Wisconsin
- Summit Lake Paiute Tribe of Nevada
- Suquamish Indian Tribe of the Port Madison Reservation
- Susanville Indian Rancheria, California
- Swinomish Indian Tribal Community (previously listed as the Swinomish Indians of the Swinomish Reservation of Washington)
- Sycuan Band of the Knmeyaay Nation
- Table Mountain Rancheria of California
- Tejon Indian Tribe
- Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
- The Chickasaw Nation
- The Choctaw Nation of Oklahoma
- The Modoc Tribe of Oklahoma
- The Muscogee (Creek) Nation
- The Osage Nation (previously listed as the Osage Tribe)
- The Quapaw Tribe of Indians
- The Seminole Nation of Oklahoma
- Thlopthlocco Tribal Town
- Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
- Tohono O'odham Nation of Arizona
- Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California)
- Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)

- Tonkawa Tribe of Indians of Oklahoma
 Tonto Apache Tribe of Arizona
 Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)
 Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)
 Tule River Indian Tribe of the Tule River Reservation, California
 Tunica-Biloxi Indian Tribe
 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
 Turtle Mountain Band of Chippewa Indians of North Dakota
 Tuscarora Nation
 Twenty-Nine Palms Band of Mission Indians of California
 United Auburn Indian Community of the Auburn Rancheria of California
 United Keetoowah Band of Cherokee Indians in Oklahoma
 Upper Sioux Community, Minnesota
 Upper Skagit Indian Tribe
 Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
 Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah)
 Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
 Walker River Paiute Tribe of the Walker River Reservation, Nevada
 Wampanoag Tribe of Gay Head (Aquinnah)
 Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community & Washoe Ranches)
 White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
 Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
 Wilton Rancheria, California
 Winnebago Tribe of Nebraska
 Winnemucca Indian Colony of Nevada
 Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)
 Wyandotte Nation
 Yankton Sioux Tribe of South Dakota
 Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
 Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)
 Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
 Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)
 Yomba Shoshone Tribe of the Yomba Reservation, Nevada
- Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas)
 Yurok Tribe of the Yurok Reservation, California
 Zuni Tribe of the Zuni Reservation, New Mexico
- Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**
- Agdaagux Tribe of King Cove
 Akiachak Native Community
 Akiak Native Community
 Alatna Village
 Algaciq Native Village (St. Mary's)
 Allakaket Village
 Alutiiq Tribe of Old Harbor (previously listed as Native Village of Old Harbor and Village of Old Harbor)
 Angoon Community Association
 Anvik Village
 Arctic Village (See Native Village of Venetie Tribal Government)
 Asa'carsarmiut Tribe
 Atkasuk Village (Atkasook)
 Beaver Village
 Birch Creek Tribe
 Central Council of the Tlingit & Haida Indian Tribes
 Chalkyitsik Village
 Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)
 Chevak Native Village
 Chickaloon Native Village
 Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)
 Chignik Lake Village
 Chilkat Indian Village (Klukwan)
 Chilkoot Indian Association (Haines)
 Chinik Eskimo Community (Golovin)
 Chuloonawick Native Village
 Circle Native Community
 Craig Tribal Association (previously listed as the Craig Community Association)
 Curyung Tribal Council
 Douglas Indian Association
 Egegik Village
 Eklutna Native Village
 Emmonak Village
 Evansville Village (aka Bettles Field)
 Galena Village (aka Louden Village)
 Gulkana Village
 Healy Lake Village
 Holy Cross Village
 Hoonah Indian Association
 Hnghes Village
 Huslia Village
 Hydaburg Cooperative Association
 Igiugig Village
 Inupiat Community of the Arctic Slope
 Iqurmuut Traditional Council
 Ivanof Bay Tribe (previously listed as the Ivanoff Bay Tribe and the Ivanoff Bay Village)
 Kaguyak Village
 Kaktovik Village (aka Barter Island)
 Kasigluk Traditional Elders Council
- Kenaitze Indian Tribe
 Ketchikan Indian Corporation
 King Island Native Community
 King Salmon Tribe
 Klawock Cooperative Association
 Knik Tribe
 Kokhanok Village
 Koyukuk Native Village
 Levelock Village
 Lime Village
 Manley Hot Springs Village
 Manokotak Village
 McGrath Native Village
 Mentasta Traditional Council
 Metlakatla Indian Community, Annette Island Reserve
 Naknek Native Village
 Native Village of Afognak
 Native Village of Akhiok
 Native Village of Akutan
 Native Village of Aleknagik
 Native Village of Ambler
 Native Village of Atka
 Native Village of Barrow Inupiat Traditional Government
 Native Village of Belkofski
 Native Village of Brevig Mission
 Native Village of Buckland
 Native Village of Cantwell
 Native Village of Chenega (aka Chanega)
 Native Village of Chignik Lagoon
 Native Village of Chitina
 Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
 Native Village of Council
 Native Village of Deering
 Native Village of Diomedea (aka Inalik)
 Native Village of Eagle
 Native Village of Eek
 Native Village of Ekuk
 Native Village of Ekwok (previously listed as Ekwok Village)
 Native Village of Elim
 Native Village of Eyak (Cordova)
 Native Village of False Pass
 Native Village of Fort Yukon
 Native Village of Gakona
 Native Village of Gambell
 Native Village of Georgetown
 Native Village of Goodnews Bay
 Native Village of Hamilton
 Native Village of Hooper Bay
 Native Village of Kanatak
 Native Village of Karluk
 Native Village of Kiana
 Native Village of Kipnuk
 Native Village of Kivalina
 Native Village of Kluti Kaah (aka Copper Center)
 Native Village of Kobuk
 Native Village of Kongiganak
 Native Village of Kotzebue
 Native Village of Koyuk
 Native Village of Kwigillingok
 Native Village of Kwinhagak (aka Quinhagak)
 Native Village of Larsen Bay
 Native Village of Marshall (aka Fortuna Ledge)

Native Village of Mary's Igloo
 Native Village of Mekoryuk
 Native Village of Minto
 Native Village of Nanwalek (aka English Bay)
 Native Village of Napaimute
 Native Village of Napakiak
 Native Village of Napaskiak
 Native Village of Nelson Lagoon
 Native Village of Nightmute
 Native Village of Nikolski
 Native Village of Noatak
 Native Village of Nuiqsut (aka Nooiksut)
 Native Village of Nunam Iqua (previously listed as the Native Village of Sheldon's Point)
 Native Village of Nunapituchuk
 Native Village of Ouzinkie
 Native Village of Paimiut
 Native Village of Perryville
 Native Village of Pilot Point
 Native Village of Pitka's Point
 Native Village of Point Hope
 Native Village of Point Lay
 Native Village of Port Graham
 Native Village of Port Heiden
 Native Village of Port Lions
 Native Village of Ruby
 Native Village of Saint Michael
 Native Village of Savoonga
 Native Village of Scammon Bay
 Native Village of Selawik
 Native Village of Shaktoolik
 Native Village of Shishmaref
 Native Village of Shungnak
 Native Village of Stevens
 Native Village of Tanacross
 Native Village of Tanana
 Native Village of Tatitlek
 Native Village of Tazlina
 Native Village of Teller
 Native Village of Tetlin
 Native Village of Tuntutuliak
 Native Village of Tununak
 Native Village of Tyonek
 Native Village of Unalakleet
 Native Village of Unga
 Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
 Native Village of Wales
 Native Village of White Mountain
 Nenana Native Association
 New Koliganek Village Council
 New Stuyahok Village
 Newhalen Village
 Newtown Village
 Nikolai Village
 Ninilchik Village
 Nome Eskimo Community
 Nondalton Village
 Noorvik Native Community
 Northway Village
 Nulato Village
 Nunakuyarmiut Tribe
 Organized Village of Grayling (aka Holikachuk)
 Organized Village of Kake
 Organized Village of Kasaan

Organized Village of Kwethluk
 Organized Village of Saxman
 Orutsarmiut Traditional Native Council (previously listed as Orutsarmiut Native Village (aka Bethel))
 Oscarville Traditional Village
 Pauloff Harbor Village
 Pedro Bay Village
 Petersburg Indian Association
 Pilot Station Traditional Village
 Platinum Traditional Village
 Portage Creek Village (aka Ohgsenakale)
 Pribilof Islands Aleut Communities of St. Paul & St. George Islands
 Qagan Tayagungin Tribe of Sand Point Village
 Qawalangin Tribe of Unalaska
 Rampart Village
 Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Seldovia Village Tribe
 Shageluk Native Village
 Sitka Tribe of Alaska
 Skagway Village
 South Naknek Village
 Stebbins Community Association
 Sun'aq Tribe of Kodiak (previously listed as the Shoonaq' Tribe of Kodiak)
 Takotna Village
 Tangirnaq Native Village (formerly Lesnoi Village (aka Woody Island))
 Telida Village
 Traditional Village of Togiak
 Tuluksak Native Community
 Twin Hills Village
 Ugashik Village
 Umkumiut Native Village (previously listed as Umkumiute Native Village)
 Village of Alakanuk
 Village of Anaktuvuk Pass
 Village of Aniak
 Village of Atmautluak
 Village of Bill Moore's Slough
 Village of Chefornak
 Village of Clarks Point
 Village of Crooked Creek
 Village of Dot Lake
 Village of Iliamna
 Village of Kalskag
 Village of Kaltag
 Village of Kotlik
 Village of Lower Kalskag
 Village of Ohogamiut
 Village of Red Devil
 Village of Salamattof
 Village of Sleetmute
 Village of Solomon
 Village of Stony River
 Village of Venetie (See Native Village of Venetie Tribal Government)
 Village of Wainwright
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe

Yupitit of Andreafski

[FR Doc. 2017-00912 Filed 1-13-17; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT9240000-L14400000.ET0000 16X L1109AF; MO# 4500094275; MTM 40614 and MTM 40633]

Public Land Order No. 7860; Partial Revocation of a Secretarial Order and a Bureau of Reclamation Order; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a withdrawal created by a Secretarial Order and a Bureau of Reclamation Order, insofar as they affect 2,643.25 acres withdrawn for the Bureau of Reclamation's Lonesome Lake Reservoir, a sub-unit of the Pick-Sloan Missouri Basin Program. The Bureau of Reclamation has determined that the lands are no longer needed for reclamation purposes.

DATES: This public land order is effective on January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Cynthia Eide, Bureau of Land Management, Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101-4669; telephone 406-896-5094. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation has determined that the lands are no longer needed for reclamation purposes. The revocation is needed to allow for a majority of the lands to be conveyed to the State of Montana under a State Indemnity Selection application. Any lands not conveyed to the State, except 3.25 acres included in an overlapping withdrawal, will be restored to the administration of the Bureau of Land Management. In the event any lands described in Paragraphs 1 and 2 below are not conveyed to the State, those lands will remain segregated from location and entry under the United States mining laws unless later opened by publication of an opening order in accordance with applicable law.

EXHIBIT B

Quinault Indian Nation

PREAMBLE

We, the Indians of the Quinault Indian Nation, in order to establish a better tribal organization; to preserve our land base, culture and identity; to safeguard our interest and general welfare; to secure the blessings of freedom and liberty for ourselves and for our posterity; and to amend our By Laws of August 22, 1922, as amended, do hereby approve and adopt this Constitution.

ARTICLE I - SOVEREIGNTY

SECTION 1 - SOVEREIGNTY: Notwithstanding the issuance of any patent, the jurisdiction and governmental power of the Quinault Nation shall extend to: (a) all lands, resources, and waters reserved to the Quinault Nation pursuant to the Treaty of Olympia, 12 Stat. 971, established by Executive Order dated November 4, 1873 (I Kapp. 923) and to all persons acting within the boundaries of those reserved lands or waters; (b) all usual and accustomed fishing grounds, open and unclaimed lands reserved for hunting and gatherings and other lands necessary for the appropriate use of fishing and hunting grounds; and all members exercising tribal hunting, gathering and fishing rights on or off the Quinault Reservation in Quinault's usual and accustomed fishing grounds or: (c) all lands or waters held by the United States in trust or reserved by the Quinault Nation for the use and benefit of any member of the Quinault Tribe when such lands or waters are not within the boundaries of an established Indian Reservation; (d) all members of the Quinault Nation while such members are within the boundaries of the United States of America or any of its Reservations, states, territories, possessions, zones, or districts; except where such jurisdiction is expressly limited by the laws of the United States; (f) offshore marine waters for a distance concurrent with the jurisdiction of the United States.

SECTION 2 - GENERAL WELFARE: It shall be the goal of the Quinault Nation to provide for the general safety and welfare of all persons acting by the right of membership in the Quinault Nation or acting or residing within the jurisdiction of the Quinault Nation.

ARTICLE II - ENROLLMENT

SECTION 1 - MEMBER: (a) Any person of 1/4 Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz blood of one of the named Tribes or combined, not a member of any other federally recognized Indian tribe. (b) Any person adopted into the Nation by a majority vote of the General Council, at a regular annual meeting of that council. The ownership of trust land on the Quinault Reservation shall be an important consideration in recommending adoption, but such ownership shall not be considered a necessary or sufficient qualification or condition for a recommendation of adoption. Adoption procedures. (1) A person applying for adoption must appear in person to the Quinault Enrollment Office to obtain the adoption application form and petition form. (2) A

(2) A person applying for adoption must have their petition signed by 50 tribal enrolled members who have registered in the past two (2) Annual General Council Meetings. This petition will remain in the Enrollment Office (This is to make sure people who have signed the petition are enrolled members). (3) A person applying for adoption must possess at minimum one of the bloods of the above listed tribes, a biological parent or grandparent on the 1978 Quinault Membership Roll at the time of person's application, and have a biological direct lineal ancestor on the 1966 Quinault Base Roll. (4) The Enrollment Committee shall request the Business Committee to prepare a ballot for each applicant who has met the criteria of 1, 2 and 3 above to be presented to the Annual General Council Meeting. (5) The petition will be posted 30 days before the Annual General Council Meeting. (6) Applicant must be present at the Annual General Council Meeting with one enrolled member to speak on his/her behalf. Failure to attend the meeting shall nullify the current application/petition. (7) Adoptions will not be allowed from the floor without following the above procedures.

SECTION 2 - ENROLLMENT COMMITTEE: (a) Membership. The enrollment committee shall consist of not less than four (4), nor more than nine (9) members of the Quinault Nation, appointed by the Business Committee. (b) Duties. The enrollment committee shall: (1) accept applications for enrollment and adoption, (2) investigate all applications for enrollment and adoption, (3) approve all applications for enrollment where applicants qualify for membership in the Quinault Nation under the provisions of this Constitution. A list of all persons approved for enrollment during the interim between annual General Council meetings shall be published and posted publicly in places determined to be appropriate to inform the general membership of pending enrollment thirty (30) days prior to the next annual General Council meeting and presented by the enrollment committee to the General Council at the next annual General Council meeting, (4) recommend to the General Council for their vote, persons approved by the enrollment committee for adoption into the Quinault Nation; a list of such persons shall be posted with the pending enrollment list, (5) participate in the interviewing and hiring of an enrollment clerk, (6) issue an official notice of denial of enrollment to any person, who, after all due investigation by the enrollment committee is found not to be qualified for enrollment in the Quinault Nation, (7) issue an official notice of denial of recommendation to any person, who, after all due investigation by the enrollment committee is found not to be acceptable for a recommendation of adoption.

SECTION 3 - APPROVED APPLICANTS: All persons approved for enrollment by the enrollment committee shall be considered members for all purposes until their names are presented at an annual General Council meeting; provided, persons approved for enrollment shall not be permitted to vote on the enrollment or adoption of any person.

SECTION 4 - APPEALS: (a) Persons denied enrollment by a final act of the enrollment committee may appeal the decision of the enrollment committee to the General Council and if denied by the General Council may appeal to the Quinault Tribal Court. Persons denied enrollment may request a recommendation of adoption. (b) Persons denied a recommendation of adoption by a final act of the enrollment committee may request that the General Council adopt them at an annual meeting of the Council.

The decision of the General Council shall be final.

SECTION 5 - OBJECTIONS TO ENROLLMENT: Any member may object to the enrollment of any person approved for enrollment at the time the name of that person approved for enrollment is presented to the General Council by the enrollment committee. The name of the member objecting shall be recorded and that objecting member shall have ninety (90) days to present sufficient evidence to cause reexamination of the enrollment application to the enrollment committee. During that ninety (90) day period and during any disenrollment investigation, the person objected to shall exercise the rights of a member. If ninety (90) days shall pass without sufficient evidence being presented to the enrollment committee to cause the enrollment committee to reinvestigate the application, the person objected to shall be enrolled.

SECTION 6 - DISENROLLMENT: (a) The enrollment committee shall not begin review of the enrollment of a member without first notifying a person subject to a disenrollment investigation that he or she is subject to such an investigation and allowing such person to view all evidence being used to question member status. (b) the enrollment committee in a disenrollment investigation shall follow all procedures set out herein for enrollment, including presentation of the names of any finally disenrolled person to the General Council at the next annual meeting of that Council. (c) Grounds for disenrollment shall be that a person submitted fraudulent evidence in the application for enrollment in the Quinault Nation in order to qualify under the provisions of this Constitution and/or Dual Enrollment in another federally recognized tribe with the exception of minors. (d) Persons finally disenrolled shall have the right to appeal their disenrollment to the Quinault Tribal Court.

SECTION 7 - DISENROLLMENT OF ADOPTED MEMBERS: Adopted members may be disenrolled by the General Council upon recommendation of the Business Committee pursuant to the procedure established in this section when it appears that their continued enrollment is not in the best interest of the Nation. (a) The Business Committee shall have exclusive authority to initiate disenrollment proceedings against an adopted member. (b) If the Business Committee after allowing an adopted member an opportunity to be heard finds that the continued enrollment of an adopted member is not in the best interest of the Nation it may recommend disenrollment to the General Council. (c) A Business Committee recommendation of disenrollment shall be placed on the published agenda of the next annual General Council meeting in action. (d) The decision of the General Council on the question of disenrollment of an adopted member shall be final and shall not be subject to judicial review.

ARTICLE III - GENERAL COUNCIL

SECTION 1 - MEMBERSHIP IN THE GENERAL COUNCIL: All members, including adopted members of the Quinault Nation shall be members of the General Council.

SECTION 2 - VOTING: Members of the General Council age 18 years or more, who are present at the appointed time and place of elections shall be permitted to vote in General Council meetings.

SECTION 3 - MEETINGS: (a) The annual meeting of the General Council shall be held on the last Friday and Saturday in March at a place within the boundaries of the Quinault Reservation. (b) All meetings of the General Council shall be announced by the Business Committee by posting notices at Taholah, Queets, Amanda Park and any other place determined by the Business Committee at least ten (10) days in advance of the meeting and by publishing notice in a newspaper of general circulation in the vicinity of the Reservation. (c) Special meetings may be called by the Business Committee or by fifty (50) voting members by giving and posting the required notice. (d) The purpose of the General Council meetings shall be to elect or recall the members of the Business Committee and to declare the will of the General Council on issues placed before the General Council by the agenda and by persons raising issues at any meeting. (e) A quorum for conducting business at any meeting shall be fifty (50) voting members. (f) The agenda for the annual meeting shall be published by the Secretary of the Tribe. All items to be placed on the published agenda shall be submitted to the Secretary thirty (30) days in advance of the annual meeting. Items on the published agenda shall be considered before the general session. A general session agenda shall be established by the Secretary. The Secretary shall accept general session agenda items no sooner than thirty (30) days before the annual meeting nor no later than the lunch break of the day of the annual meeting. (g) In addition to the annual meeting, quarterly General Council meetings may be held.

SECTION 4 - BILL OF RESERVED POWERS: The following powers shall be reserved to the General Council and the Business Committee or other agency of the Nation shall be required to obtain the advice and consent of the General Council prior to taking any action with regard to these powers. Any action the Business Committee shall take with regard to these powers without obtaining the advice and consent of the General Council shall be void and have no legal effect. (a) The relinquishment of any National criminal or civil jurisdiction to any agency, public or private; provided, that this section shall not prevent the Business Committee from commissioning non-National or non-Bureau of Indian Affairs peace officers to enforce National laws and regulations. (b) The termination of the Quinault Reservation. (c) The adoption of persons into the Nation. (d) The sale of hunting or fishing rights, grounds or stations. (e) Any other act which jeopardizes any treaty right of the Quinault Nation; or is prohibited to the Business Committee by this Constitution, or by instruction of the General Council, without prior approval of the General Council.

ARTICLE IV - BUSINESS COMMITTEE

SECTION 1 - OFFICERS: The officers of the Nation shall consist of the President, the Vice-President, Secretary and Treasurer and seven (7) Councilmen. The said eleven (11) officers shall constitute the Business Committee of the Quinault Nation and all shall have the right to vote on issues brought before the Business Committee.

SECTION 2 - QUORUM: A quorum of the Business Committee shall consist of at least six (6) officers, including the President and Vice-President, and decisions shall be made by a majority vote of those present. In the absence of the President and Vice-President, no meeting shall be held unless an officer has been duly appointed by the President or the Vice-President to chair the meeting.

SECTION 3 - ELECTION: The officers shall be elected at the annual meeting of the General Council and shall serve three year staggered terms. Nominations shall be made from the floor. Election shall be by secret ballot. No absentee ballots shall be allowed. Officers shall be elected one at a time. When during the course of any General Council meeting, any presently serving officer shall be elected to fill any other position on the Business Committee, the position vacated by the election shall be immediately filled by electing another qualified person to the remainder of the term of the vacated position.

SECTION 4 - QUALIFICATIONS: Any enrolled member who maintains permanent residence within the Reservation boundaries, is present at the election, and is entitled to vote in the General Council, shall be eligible to be elected as an officer of the Nation, provided that no more than one brother, sister, father, mother, husband, wife or child of any person already serving as an officer may be elected as an officer. Officers moving their residence outside the boundaries of the Reservation during their term of office will be considered to have resigned from the Business Committee. At least two (2) Council Members shall be residents from the community of Queets.

SECTION 5 - REMOVAL: (a) Any officer who is absent from three consecutive regular Business Committee meetings without an excuse acceptable to the Business Committee or who commits acts in violation of his position of trust, as an officer of the Quinault Nation shall be removed from office. (b) Prior to removal pursuant to (a) above, the officer whose removal is contemplated shall be given a reasonable opportunity to answer charges and a written statement of the charges against him shall be made available to him fifteen (15) days prior to said meeting. (c) An officer who has been removed shall have the right within thirty (30) days to file an appeal to the General Council. In the event of such an appeal, the Business Committee shall promptly call a special meeting of the General Council, at which special meeting, it shall be decided whether the removed officer shall be permanently removed. Failure to obtain a quorum of the General Council at such a special meeting shall be considered affirmation of removal of any officer.

SECTION 6 - RECALL: Any officer may be removed for any reason by vote of the General Council on a recall petition, specifying the reasons for removal. A recall petition shall be signed by at least fifty (50) qualified voters, and filed with the Business Committee. Upon the filing of such a petition, the Business Committee shall promptly call a special meeting of the General Council. Written notice of the petition shall be given to the officer at least fifteen (15) days prior to the meeting, and he shall be entitled to state his case before the General Council. The decision of the General Council shall be final. Failure to obtain a quorum at such a General Council meeting shall require the dismissal of the recall petition and no new recall petition may be filed against the officer in question

for a period of one year following said meeting.

SECTION 7 - VACANCIES: Vacancies on the Business Committee shall be filled no more than sixty (60) days following the occurrence of a vacancy by a 2/3 vote of a quorum of the remaining officers; provided, that such appointee is a voting member of the Nation and is otherwise qualified. The vacancy shall be filled by election at the next General Council meeting for the remainder of the existing term. No person not elected to the Business Committee by the General Council shall be appointed to the position of President or Vice-President.

SECTION 8 - MEETINGS: Regular open meetings of the Business Committee shall be held at least once in each month on a regular schedule set by the Business Committee. Special meetings may be called on a reasonable notice to all officers. Executive sessions of the Business Committee may be held on majority vote of the Committee. All regular meetings shall be held within the boundaries of the Quinault Reservation.

SECTION 9 - BY LAWS: The Business Committee shall by ordinance adopt its own procedures and duties of officers, except as herein provided.

ARTICLE V - POWER AND RESPONSIBILITIES OF THE BUSINESS COMMITTEE

SECTION 1 - GENERAL: It shall be the duty of the Business Committee to govern all people, resources, lands, and waters under the jurisdiction of or reserved to the Quinault Nation in accordance with this Constitution, the Quinault Tribal Code of laws, the Quinault Treaty, the laws of the United States expressly limiting the powers of the Quinault Nation, and the instructions of the General Council. Any rights, powers and authority expressed, implied, or inherent vested in the Nation but not expressly referred to in this Constitution shall not be abridged by this Article, but shall be exercised by the Business Committee or the General Council by the adoption of appropriate ordinances and agreements.

SECTION 2 - LAWS: The Business Committee shall have the power to enact laws for the welfare of the Nation; provided, however, that such laws are not in conflict with this Constitution, and that public hearings be held on each such law prior to their adoption.

SECTION 3 - POWERS: The Business Committee shall have the power: (a) To enter into agreements on behalf of the Nation with federal, state, and local governments or agencies, and other public and/or private organizations or persons; provided, that these agreements are not in conflict within this Constitution, the instructions of the General Council, or the laws of the Quinault Nation. (b) To provide for the execution and enforcement of the laws of the Quinault Nation; and to establish an independent Tribal Court, and to provide by law for its jurisdiction, procedures, and appointment or election of its judges; and to charter and regulate associations, corporations for profit and not for profit, towns, special districts, schools, religious institutions, financial institutions and all

other entities; and to establish National enterprises as branches of the National government. (c) To levy and collect taxes on members and other persons or entities within the National jurisdiction; provided, that no tax shall be levied on trust real property; further provided that no tax shall be levied without holding public hearings convenient in time and place to all members of the Quinault Nation and those subject to its jurisdiction; to determine the need for, and effect of, such a tax. (d) To assert the defense of sovereign immunity in suits brought against the Nation and to waive the said defense by agreement where National realty or personality not held in trust by the United States is pledged or when property held in trust by the United States is pledged with the consent of the United States. (e) To govern the sale, disposition, and lease of tribally owned assets, and to provide for the zoning and other land use regulation of all lands within the boundaries of the Reservation and the jurisdiction of the Quinault Nation; and for the purity, volume, and use of all water to which the Quinault Nation and the Quinault people are entitled; and for the purity of the air within the Quinault Reservation. (f) To manage, lease, permit, sell, or otherwise deal with tribally owned lands, tribally owned interests in lands, water rights, fishing stations, mineral rights, hunting grounds, fish and wildlife resources; or other tribally owned assets, and to purchase or otherwise acquire lands or interests in lands within or without the Reservation, and to hold those lands in tribal or federal trust and to regulate allotted trust and non-trust lands within the Reservation boundaries insofar as such regulation is not prohibited by federal law and does not violate the rights of owners; provided, that tribally owned lands held in trust by the United States shall not be sold or encumbered unless authorized by the General Council. The authority to manage National lands and timber may be delegated to a special committee or committees. (g) To engage in any business that will further the economic well being of the Nation and of the members of the Nation, or undertake any program or projects designed for the economic advancement of the people or the Nation; and to regulate the conduct of all business activities within the Reservation boundaries. (h) To borrow money from the federal government or other sources, to direct the use of such funds of productive purposes, and to pledge or assign chattels or income due or to become due. (i) 1--To administer any funds within the control of the Nation in accordance with an approved National budget; to make expenditures from available funds for tribal purposes including salaries and expenses of tribal employees or officials, 2--The Business Committee shall prepare an annual Nation budget, 3--This budget shall include all normal operating expenses, any special projects or expenditures contemplated by the Nation, 4--All expenditures of tribal funds by the Business Committee shall be authorized by it or by the General Council in legal session and the amounts so expended shall be a matter of public record. 5--The Business Committee shall have authority to approve amendments to the Nation's annual budget for special appropriations in any budget year. 6--The approved budget shall be posted at the National Business Office in Taholah, Queets, and the Post Office in Taholah. (j) To provide for an escheat in order that real and personal property of members who die intestate and without heirs shall revert to the Nation. (k) To manage, protect and preserve the wildlife and natural resources of the Nation and to regulate hunting, fishing, including shellfishing, and trapping within the jurisdiction of the Nation. This power may be delegated to a special committee or committees. (l) On petition by fifty (50) voting members of the Nation or on its own motion, the Business Committee shall, within a reasonable time, hold a general membership election by secret ballot on

any issue. (m) All officers and employees of the Nation who have possession of tribal funds shall account for same periodically to the Business Committee. All officers and employees handling National funds shall be bonded. There shall be an annual audit of the National funds handled by National officers or employees to be performed by the Bureau of Indian Affairs or Certified Public Accountants. (n) To condemn land or interest in lands for public purposes within the boundaries of the Reservation; provided that owners of the lands condemned shall be paid the fair market value of such lands and any timber or buildings thereon. (o) To exact all laws which shall be necessary and proper for carrying into execution any power delegated to the Business Committee or delegated to any person or committee under the supervision of the Business Committee. (p) To govern the inheritance of real and personal property owned by members.

ARTICLE VI - RATIFICATION

This Constitution shall go into effect when ratified by two thirds (2/3) of all members eligible to vote, present and voting at a General Council meeting at which a debate and vote on this Constitution has been placed on the agenda. All enrolled members of the Quinault Nation shall be notified of such a General Council meeting at least thirty (30) days prior to such a meeting, and the notice provided shall make specific reference to the proposed ratification of this Constitution. Election of officer's provisions shall not take effect until the annual meeting of the General Council following the adoption of this Constitution.

ARTICLE VII - AMENDMENT

SECTION 1: This Constitution may be amended by a two thirds (2/3) vote of a quorum of the General Council at an annual or special meeting provided, however, that the notice of the meeting at which an amendment is proposed shall be given at least thirty (30) days before the meeting, and shall set forth the proposed amendment and an explanation thereof; and provided further that after discussion of the amendment at the meeting there shall be a recess of at least 30 minutes to enable the members to further discuss the amendment among themselves.

SECTION 2: The Business Committee shall call a meeting to consider a proposed amendment upon its own motion, or upon receipt of a petition signed by fifty (50) voting members or upon resolution of the General Council.

ARTICLE VIII - ENFORCEABILITY

The provisions of the Constitution shall be enforceable exclusively in the Quinault Tribal Court and in the Federal Courts of the United States where provided by federal law, and shall not be enforceable in any other court, except where the Quinault Tribe brings suit in its own name in any other Court. This section shall not be interpreted as a consent to suit or waiver of sovereign immunity by the Quinault Indian Nation.

ARTICLE IX - APPROVAL OF SECRETARY OF INTERIOR

The Secretary of the Interior shall have the power to review actions taken pursuant to the herein named powers and all other National powers, but only in those cases and only to the extent that the Secretary has been given such powers of review by express statutory command of the Congress of the United States.

ADOPTED MARCH 22, 1975

EXHIBIT C



QBC By-Laws
Approved July 14, 2008
Page 1 of 14

Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360) 278 - 8211

Quinault Business Committee **By-Laws**

Revised

By: Dawneen DeLaCruz, Policy Coordinator

**BY LAWS
Of the
Quinault Business Committee
Of the
Quinault Indian Nation**

PREAMBLE

We, the Quinault Business Committee, the governing body of the Quinault Indian Nation, having been entrusted by our people, through the Constitution, to pursue our right of self-determination and self-sufficiency; to protect, develop, enhance, and preserve our human and natural resources, our culture, and our identity; and to exercise our sovereign powers over all land, resources, and people within our jurisdiction, do hereby approve and adopt these By-Laws according to Article IV, Section 9, of the Constitution of the Quinault Indian Nation.

ARTICLE I- OFFICERS

The Officers of the Quinault Business Committee shall consist of the President, the Vice-President, the Secretary, the Treasurer, and seven (7) Councilpersons for total of (11) Officers. The said eleven (11) Officers shall have the right to vote on issues brought before the Quinault Business Committee.

ARTICLE II- POWERS

The Quinault Business Committee shall exercise all powers granted to them pursuant to Articles V, Section 1, 2, and 3 of the Constitution of the Quinault Indian Nation.

ARTICLE III - RESERVED POWERS

Unless approved and enacted by Resolution, Law, Ordinance or By-Laws, the Quinault Business Committee reserves to itself all and every right, power, and authority, express or implied, delegated to it by the Constitution of the Quinault Indian Nation.

ARTICLE IV - MEETINGS

Quinault Business Committee meetings shall be open to the public unless expressly stated otherwise in this document. A calendar of events shall be published yearly.

Art. IV - Section 1. Annual Organizational Meeting

The Quinault Business Committee shall meet within thirty (45) days after the Annual Meeting of the Quinault Indian Nation General Council in order to:

- A. Discuss resolutions and directives of the Quinault Indian Nation General Council;

Emergency meetings may be called with telephonic notice by the President or the Vice-President. The Officer who called the emergency meeting shall present all pertinent facts, material, and information regarding the issue or issues to be addressed to each Officer present. A quorum of the Quinault Business Committee Officers shall be established in order for any action to be binding. Emergency meetings of the Quinault Business Committee may be held by means of conference telephone or similar communications equipment if originating from the Quinault Indian Reservation.

Art. IV – Section 5. Legal Session

The Quinault Business Committee may hold a Legal Session to become informed and updated on current legal issues that have or may have an impact on the Quinault Indian Nation. The Legal Session is an information-only session that shall be closed to the public due to sensitive legal issues that may arise. Only those persons whom the Business Committee approves to attend the Legal Session may be present. All information, including discussion and documents presented at the Legal Session are privileged and confidential and shall not be disclosed or made public unless a majority of the Business Committee determines otherwise. Any formal decisions on legal issues shall be addressed in a regular meeting of the Quinault Business Committee.

Art. IV – Section 6. Executive Session

From time to time issues of a sensitive nature will come before the Quinault Business Committee. These issues shall not be discussed publicly. To address sensitive issues, the Quinault Business Committee shall conduct an Executive Session. Such issues shall be set apart from the regular agenda for discussion in an Executive Session. Only those persons whom the Quinault Business Committee names shall be present in the Executive Session.

Issues related to the following shall be discussed in Executive Session unless the majority of the Business Committee decides otherwise:

1. Personnel that the Business Committee has purview over
2. Minors and the protection of minors, or victims and potential victims of crime
3. Litigation or potential litigation
4. Confidential or proprietary Quinault Business or Enterprise matters
5. Matters that require confidentiality under Federal, State, or Quinault law or policy
6. Matters that require confidentiality under any agreement or contract entered into by the Quinault Indian Nation
7. Matters regarding negotiation by the Quinault Indian Nation of a contract or agreement
8. When requested by a Tribal member

Art. IV – Agenda

- A. Submitting Agenda Items. The agenda for each Quinault Business Committee meeting shall be prepared by the Secretary and posted each Friday prior to the regularly scheduled meeting. All agenda items shall be:

5. The resolution pertaining to the agenda item is incomplete or not in its proper form.

Art. IV – Section 8. Meetings

All matters brought before meetings of the Quinault Business Committee shall be recorded, transcribed, and presented by the Secretary or designated Officer for approval at the next regular meeting.

Art. IV – Section 9. Quorum

A majority of six (6) Officers of the Quinault Business Committee shall constitute a quorum for the transaction of business. When a quorum has been established at any meeting, a majority of Officers present thereat shall make a decision on any approved agenda item brought before them at such meetings, except as otherwise provided by law or by these By-Laws. If a quorum is not established, the meeting will be called to order by the President or designated Officer, a roll call of Officers in attendance will be taken, and the meeting will be adjourned by the President or designated Officer for lack of quorum.

Art. IV – Section 10. Order of Business

All regular meetings of the Quinault Business Committee shall be conducted in the following order of business:

- A. Legal Session;
- B. Meeting called to order by the President or designated Officer;
- C. Invocation;
- D. Roll Call;
- E. Ascertainment of a quorum;
- F. Review of the minutes of the last regular meeting, special meetings, and emergency meetings;
- G. Approval of the minutes by vote;
- H. Special request and introduction of guest;
- I. Consideration of added agenda items;
- J. Approval of agenda;

and Amanda Park. Additional notice at the discretion of the Quinault Business Committee may be published and provided to the interested individuals.

ARTICLE VI – DUTIES OF OFFICERS

Art. VI – Section 1. President

The President is the Chief Executive Officer of the Quinault Indian Nation. The duties of the President are:

- A. Preside at all meetings of the Quinault Business Committee and Quinault Indian Nation General Council;
- B. Designate an Officer to chair official meetings in the absence of the President or Vice President.
- C. Sign all official papers and documents approved by the Quinault Business Committee or Quinault Indian Nation General Council, unless some other person is specifically authorized to do so by a majority vote of the Quinault Business Committee;
- D. Direct the implementation, administration and enforcement of all laws passed by the Quinault Business Committee or Quinault Indian Nation General Council;
- E. Act as the principle Officer representing the Quinault Indian Nation in establishing, maintaining, and furthering government to government relations with Federal, State, and Local Governments;
- F. Appoint a Parliamentarian, who is not an Officer of the Business Committee or is a non voting member of the committee/council, to maintain order at:
 1. Quinault Indian Nation General Council meetings;
 2. Special General Council meetings; and
 3. At the President's or presiding Officer's discretion, Quinault Business Committee meetings.

Art. VI – Section 2. Vice-President

- A. The Vice-President shall assume all Presidential duties delegated to him or her by the President.
- B. The Vice-President shall serve as the Chief Executive Officer of the Quinault Indian Nation in the absence of the President or in the event the President is

Art. VI – Section 4. Treasurer

The duties of the Treasurer are to:

- A. Have care and custody of all funds and assets of the Quinault Indian Nation with the exception of land, water, and wildlife;
- B. Disburse funds in his or her care and custody as ordered by resolution of the Quinault Business Committee provided that such funds are on hand and have not previously been encumbered;
- C. Dispose of property and other assets in his care and custody as ordered by resolution of the Quinault Business Committee;
- D. Review and oversee financial affairs of the Quinault Indian Nation and initiate audits when necessary;
- E. Obtain the financial records of any Quinault Indian Nation National Department, Agency, Commission, Enterprise, Contract, or any other entity of the Quinault Indian Nation;
- F. Immediately stop expenditures until appropriate action is taken by the Quinault Business Committee in the event it becomes known to the Treasurer that previously committed funds are not actually available;
- G. Provide a quarterly report to the Quinault Business Committee reflecting the overall financial condition of the Quinault Indian Nation at the second regular meeting following the end of each calendar quarter;
- H. Provide a report reflecting the overall financial condition of the Quinault Indian Nation at each Annual Meeting of the Quinault Indian Nation General Council;
- I. Provide other financial reports that may be requested by a majority vote of the Quinault Business Committee.

Art. VI – Section 5. Councilperson

Councilpersons are Officers of the Quinault Business Committee and shall:

- A. Make up the legislative body of the Quinault Indian Nation's government;
- B. Carry out Article III of these By-Laws;
- C. Oversee and carry out all delegated responsibilities and report these activities to the Quinault Business Committee.

ARTICLE X – OATH OF OFFICE

Upon election or appointment, new Officers of the Quinault Business Committee shall take an Oath of Office and be sworn in by the Chief or Presiding Judge of the Quinault Indian Nation. The Oath of office shall be as follows:

“I _____
DO HEREBY SOMEMNLY SWEAR (or affirm)
that I shall preserve, support, and protect, the
Constitution, By-Laws, Tribal Code of Laws and
Quinault River Treaty of 1855, of the Quinault
Indian Nation to the best of my ability, so help
me God.”



Quinault Indian Nation

POST OFFICE BOX 189 ☐ TAHOLAH, WASHINGTON 98587 ☐ TELEPHONE (360) 278 - 8211

QUINAULT BUSINESS COMMITTEE

RESOLUTION NO. 08-129-87

WHEREAS, the Quinault Business Committee is the governing body of the Quinault Indian Nation; and,

WHEREAS, under Article IV, Section 9 of the Constitution of the Quinault Indian Nation, the Quinault Indian Nation Business Committee is charged with the responsibility of adopting its own procedures and the duties of its officers by ordinance; and,

WHEREAS, the Quinault Indian Nation Business Committee finds that its prior By-Laws, containing the Business Committee procedures and duties of the officers of the Business Committee, are no longer effective or allow for efficient policy making given the increased number and the different nature of issues the Business Committee and its officers are now required to act upon; and,

WHEREAS, the Quinault Indian Nation Business Committee has discussed the adoption of new By-Laws and has drafted new By-Laws that it finds will enable it to effectively and efficiently carry out its duties and responsibilities and enable its officers to effectively and efficiently carry out their duties and responsibilities; and,

WHEREAS, public hearings were held in Queets and Taholah on the By-Laws drafted by the Business Committee; and,

WHEREAS, after considering public comments to the By-Laws;

NOW, THEREFORE, BE IT RESOLVED that the By-Law drafted by the Business Committee are hereby enacted into law as an ordinance and shall be called By-Laws of the Quinault Business Committee of the Quinault Indian Nation; and,

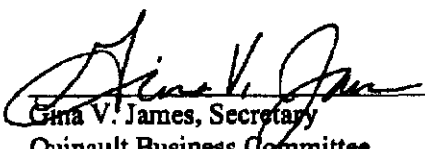
BE IT FURTHER RESOLVED, that the adopted By-Laws shall be attached to this resolution.



Fawn R. Sham, Chairman
Quinault Indian Nation Business Committee

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the Business Committee at Taholah, Washington, on the 14 day of July 2008, at which time a quorum was present by a vote of 8 FOR, 1 AGAINST, and 1 ABSTAIN.



Gina V. James, Secretary
Quinault Business Committee

EXHIBIT D

Treaty of Olympia 1856

Articles of agreement and convention made and concluded by and between Isaac I. Stevens, governor and superintendent of Indian affairs of the Territory of Washington, on the part of the United States, and the undersigned chiefs, headmen, and delegates of the different tribes and bands of the Qui-nai-elt and Quileh-ute Indians, on the part of said tribes and bands, and duly authorized thereto by them.

ARTICLE 1.

The said tribes and bands hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows: Commencing at a point on the Pacific coast, which is the southwest corner of the lands lately ceded by the Makah tribe of Indians to the United States, and running easterly with and along the southern boundary of the said Makah tribe to the middle of the coast range of mountains; thence southerly with said range of mountains to their intersection with the dividing ridge between the chehalis and Quinialt Rivers; thence westerly with said ridge to the Pacific coast; thence northerly along said coast to the place of beginning.

ARTICLE 2.

There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian affairs or Indian agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any lands not in the actual claim and occupation of citizens of the United States, and upon any lands claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through said reservation, on compensation being made for any damage sustained thereby.

ARTICLE 3.

The right of taking fish at all usual and accustomed grounds and stations is secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing the same; together with the privilege of hunting, gathering roots and berries, and pasturing their horses on all open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens; and provided, also, that they shall alter all stallions not intended for breeding, and keep up and confine the stallions themselves.

ARTICLE 4.

In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of twenty-five thousand dollars, in the following manner, that is to say: For the first year after the ratification hereof, two thousand five hundred dollars; for the next two years, two thousand dollars each year; for the next three years, one thousand six hundred dollars each year; for the next four years, one thousand three hundred dollars each year; for the next five years, one thousand dollars each year; and for the next five years, seven hundred dollars each year. All of which sums of money shall be applied to the use and benefit of the said Indians under the directions of the President of the United States, who may from time to time, determine at his discretion upon what beneficial objects to expend the same; and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE 5.

To enable the said Indians to remove to and settle upon such reservation as may be selected for them by the President, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of two thousand five hundred dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

ARTICLE 6.

The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of the said Indians be promoted by it, remove them from said reservation or reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands, in which latter case the annuities, payable to the consolidated tribes respectively, shall also be consolidated; and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indians, and which they shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment made accordingly therefor.

ARTICLE 7.

The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 8.

The said tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision and abide thereby; and if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as is prescribed in this article in case of depredations against citizens. And the said tribes and bands agree not to shelter or conceal offenders against the laws of the United States, but to deliver them to the authorities for trial.

ARTICLE 9.

The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribes who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her, for such time as the President may determine.

ARTICLE 10.

The United States further agree to establish at the general agency for the district of Puget Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to the children of the said tribes and bands in common with those of the other tribes of

said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and to employ a blacksmith, carpenter, and farmer for a term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance to be defrayed by the United States, and not deducted from their annuities.

ARTICLE 11.

The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

ARTICLE 12.

The said tribes and bands finally agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside on their reservations without consent of the superintendent or agent.

ARTICLE 13.

This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands of Indians, have hereunto set their hands and seals, at Olympia, January 25, 1856, and on the Qui-nai-elt River, July 1, 1855.

Isaac I. Stevens, Governor and Sup't of Indian Affairs.
Tah-ho-lah, Head Chief Qui-nite-'l tribe, his x mark. (L.S.)
How-yat'l, Head Chief Quil-ley-yute tribe, his x mark. (L.S.)
Kal-lape, Sub-chief Quil-ley-hutes, his x mark. (L.S.)
Tah-ah-ha-wh't'l, Sub-chief Quil-ley-hutes, his x mark. (L.S.)
Lay-le-whash-er, his x mark. (L.S.)
E-mah-lah-cup, his x mark. (L.S.)
Ash-chak-a-wick, his x mark. (L.S.)
Ay-a-quan, his x mark. (L.S.)
Yats-see-o-kop, his x mark. (L.S.)
Karts-so-pe-ah, his x mark. (L.S.)
Quat-a-de-tot'l, his x mark. (L.S.)
Now-ah-ism, his x mark. (L.S.)
Cla-kish-ka, his x mark. (L.S.)
Kler-way-sr-hun, his x mark. (L.S.)
Quar-ter-heit'l, his x mark. (L.S.)
Hay-nee-si-oos, his x mark. (L.S.)
Hoo-e-yas'lsee, his x mark. (L.S.)
Quilt-le-se-mah, his x mark. (L.S.)
Qua-lats-kaim, his x mark. (L.S.)
Yah-le-hum, his x mark. (L.S.)
Je-tah-let-shin, his x mark. (L.S.)
Ma-ta-a-ha, his x mark. (L.S.)
Wah-kee-nah, Sub-chief Qui-nite'l tribe, his x mark. (L.S.)
Yer-ay-let'l, Sub-chief, his x mark. (L.S.)
Silley-mark'l, his x mark. (L.S.)

Cher-lark-tin, his x mark. (L.S.)

How-yat-'l, his x mark. (L.S.)

Kne-she-guartsh, Sub-chief, his x mark. (L.S.)

Klay-sumetz, his x mark. (L.S.)

Kape, his x mark. (L.S.)

Hay-et-lite-'l, or John, his x mark. (L.S.)

Executed in the presence of us; the words "or tracts," in the II. article, and "next," in the IV. article, being interlined prior to execution.

M. T. Simmons, special Indian agent.

H. A. Goldsborough, commissary, &c.

B. F. Shaw, interpreter.

James Tilton, surveyor-general Washington Territory.

F. Kennedy.

J. Y. Miller.

H. D. Cock.

Jan. 25, 1856. Ratified Mar. 8, 1859. Proclaimed, Apr. 11, 1859.

EXHIBIT E

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TITLE 61

NATURAL RESOURCE MANAGEMENT

61.01.010

Findings

- (a) From time immemorial, the Quinault Indian Nation has conserved and protected the invaluable wildlife and natural resources subject to its jurisdiction from waste and excessive exploitation, and has been proud of the great natural beauty of lands and water now included within the boundaries of the Quinault Reservation.
- (b) The Quinault Business Committee, as a governing body of the Quinault Indian Nation, hereby finds and declares that the forest resources within the Reservation are of primary importance to the economic and esthetic well-being of the Quinault Reservation and its inhabitants and the surrounding community; that a properly managed forest products industry is of prime

importance; that it is in the tribal and the public interest that the forest resources be managed consistently with the best available knowledge and technology; that such proper management in the past has been lacking; and that the proper care of the Reservation resources is important to fishery, water, air, scenic beauty and other natural resources of the Reservation.

- (c) The Business Committee finds that minor forest products are an important Reservation resource; that they provide jobs and income for Reservation residents; that current minor forest products harvesting methods are often very destructive of forest regeneration, watersheds and other natural resources; that minor forest products are regularly stolen from Reservation lands and landowners; that such thefts deprive the Reservation economy of jobs and income; and that this Title and regulations adopted pursuant to this Title are

necessary and appropriate to protect minor forest products, other natural resources and Reservation landowners.

(d) The Business Committee of the Quinault Indian Nation finds that activities in and around streams or utilization of ground waters causing reductions or changes in the courses of streams or natural stream flows or the addition of materials or substances to waters of the Reservation or the diversion or blockage of streams are likely to detrimentally affect the treaty protected fishery resources of the Reservation. The Quinault Reservation was established specifically to provide protection to the fisheries resources upon which the people of the Reservation depended for their livelihood. The people of the Reservation still depend on those resources and this Title is enacted to protect them and their habitat.

(e) The Business Committee further finds and

declares that these and other consideration will be furthered by the passage and adoption of this Title.

- (f) The policies and goals of this Title include, but are not limited to:
- (1) Protection, enhancement and perpetuation of the timber growing capacity of Reservation lands and the requirements for minimum reforestation that will reasonably utilize the timber growing capacity of these forest lands and ensure uninterrupted, perpetual timber harvest opportunities.
 - (2) Recognition of the need to stabilize and balance the ecosystems of the Reservation by reasonable long-range controls on the timing of forest harvest activities within major drainages.
 - (3) Protection of cleanliness of the air of the Reservation and the productivity and purity of its waters.

- (4) Promotion of efficiency by permitting maximum operating freedom consistent with the other policies and goals of this Title.
- (5) Consideration of land use planning goals contained in tribal zoning regulations.
- (6) Recognition and achievement of the objectives set out in the Code of Federal Regulations at 25 CFR 163, especially as they pertain to Indian self-determination, sustained yield and conservation.
- (g) The Business Committee declares its intent to create and maintain a comprehensive system of natural resource practice regulations to assure:
 - (1) An ecologically balanced environment that is compatible with the desired life style of Reservation residents.
 - (2) Protection to waters, forest soils and other Reservation resources by utilizing

all reasonable methods of technology in conducting forest practices.

- (3) Protection and enhancement of Reservation fisheries resources.
- (4) Protection and enhancement of wildlife, Coastal Districts, and locations having traditional tribal significance.
- (5) Reasonable standards of operation for harvest activities and other forest land activities associated with timber and minor forest product harvests.
- (6) Adequate regeneration with acceptable commercial species on all harvested forest lands.
- (7) Recognition of both the Reservation and private interests in the profitable growth and harvesting of timber.
- (8) Reasonable standards for operations and activities occurring in or near any stream, lake, river, marshes, springs, groundwater, tidal area, pond, slough,

wetland or other body of water.

61.02.010 Jurisdiction of the Quinault Indian Nation

This Title shall be applicable to all persons acting within the boundaries of the Quinault Indian Reservation.

61.03.010 Definitions

- (a) Application shall mean the natural resource practice or minor forest product work permit application. Approved Application shall mean the legal authority to work, conduct activities, or conduct projects subject to the terms and conditions of the approval and subject to the rules and regulations adopted pursuant to this Title and the laws of the Quinault Indian Nation.
- (b) Bureau of Indian Affairs (BIA) means the agency of the United States Department of the Interior charged with carrying out the United States' trust responsibilities and policies in relation to Indian tribes.
- (c) Business Committee shall mean the Business

Committee of the Quinault Indian Nation, as defined in the Constitution of the Quinault Indian Nation.

- (d) Cedar means shakes, shingles, shake and shingle bolts or blocks, cedar fence posts or poles, cedar hop poles, cedar pickets or any other cedar logs when harvested for manufacture into shakes, shingles or any other products other than lumber.
- (e) Christmas Trees means any trees commonly known as Christmas trees of any species, not including logs, poles or other forest products from which substantially all of the limbs have been removed.
- (f) Contiguous shall mean land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.
- (g) Conversion to a Use Other than Commercial Timber Operations shall mean a bona fide

conversion to an active use which is incompatible with timber growing.

- (h) Court means the Quinault Tribal Court.
- (i) Cutter means any person who cuts, digs, breaks or otherwise removes any minor forest products. An operator may be a cutter.
- (j) Minor Forest Product Work Permit means the documentation required by this Title, or regulations adopted pursuant to this Title, of a person's authorization to carry on activities as a cutter.
- (k) Department shall mean the Quinault Department of Natural Resources. Director shall mean the Director of the Department of Natural Resources or his or her designated agent.
- (l) Designated Agent means a person designated by an operator to act as his agent and to supervise a forest products operation.
- (m) Forest Land shall mean all Reservation land which is capable of supporting a merchantable stand of timber and is not being actively used

for a use which is incompatible with timber growing.

(n) Forest Landowner shall mean any person in actual or constructive control of forest land, whether such control is based on legal title or equitable title or some combination thereof or on any interest that entitles the holder to sell or otherwise dispose of any or all the timber on such land in any manner, provided that, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition unless such lessee or other person has the right to sell or otherwise dispose of any or all the timber located on such forest land.

(o) Natural Resource Practice shall mean any activity conducted on or directly pertaining to forest lands, tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater, wetlands, marshes and any other body of water,

including but not limited to:

- (1) Road and trail construction.
- (2) Harvesting, final and intermediate.
- (3) Pre-commercial thinning.
- (4) Reforestation.
- (5) Fertilization.
- (6) Prevention and suppression of disease and insect damage.
- (7) Salvage of trees and down logs.
- (8) Brush control.
- (9) Gravel and mineral extraction.
- (10) Any activity with the potential to effect tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater's, wetlands, marshes and any other body of water

(p) Natural Resource Practice Regulations/Regulations shall mean any rules promulgated and authorized pursuant to this Title.

(q) Forest Product means timber or minor forest

product as defined in this Title.

- (r) General Council shall mean the General Council of the Quinault Indian Nation, as defined by the Constitution of the Quinault Indian Nation.
- (s) Hauling Permit means the documentation required by this Title of a person's authority to haul minor forest products.
- (t) Hydraulic Project means any activity in or near or potentially effecting tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwaters, wetlands, marshes and any other body of water
- (u) Operator shall mean any person engaging in forest practices except an employee with wages as his sole compensation.
- (v) Intermittent Stream shall mean a stream or stream segment that normally goes dry for a portion of any calendar year.
- (w) Minor Forest Product means cedar, Christmas trees, foliage, bark, firewood, other wood

products, seeds, cones, beargrass, mushrooms and seedlings.

- (x) Operator means the documentation required by this Title of a person's authority to engage in activities as a forest products operator.
- (y) Person shall mean any individual, partnership, private, public or municipal corporation, county, state, local, federal or tribal governmental entity or association of individuals of whatever nature.
- (z) Public Roads for purposes of this Title only, shall mean that portion or the whole of the following roads and streets within the boundaries of the Quinault Indian Reservations: U.S. Highway 101, State Highway 109, the Moclips Highway (Cook Creek Road), and while the vehicle traveling it is properly licensed by the Tribe, Cape Elizabeth Road. All other roads and streets within the boundaries of the Quinault Indian Reservation for purposes of this Title are declared

private and/or tribal.

- (aa) Quinault Indian Reservation/Reservation shall mean all lands and waters included or intended to be included within the boundaries of the Quinault Indian Reservation as set out in the Executive Order of the President of the United States of November 4, 1873 (I Kappler 923), or Public Law 100-638, 102 Stat. 3327.
- (bb) Reservation Resource shall mean land, water, trees and other vegetation, fish and wildlife and capital improvement within the exterior boundaries of the Quinault Indian Reservation.
- (cc) Slash shall mean pieces of woody material containing more than 3 cubic feet resulting from natural resource practices.
- (dd) Stocking/Acceptable Stocking shall mean the minimum number of well distributed, vigorous seedlings, saplings or trees per acre of approved species, all as shall be defined and determined by the Quinault Department of Natural Resources and contained in the natural

resource practice regulations promulgated pursuant to this title.

(ee) Stumpage means the fee or rate paid to landowners for the removal of minor forest products.

(ff) Timber shall mean forest trees, standing or down, of commercial species, including Christmas trees.

(gg) Timber Owner shall mean any person having any part or all of the legal interest in timber, including a contract purchaser.

(hh) Unlawful Harvest means any unauthorized cutting, harvesting or removal of any timber or forest product in the absence of excusable mistake. For this purpose, excusable mistake shall not include the failure to properly survey or make property lines or any failure to comply with the terms of this Title.

(ii) Wildlife shall mean any animal, fish, shellfish, aquatic animal or bird, normally not domesticated, which permanently or

periodically inhabits Reservation lands.

6.04 Regulations

61.04.010 Natural Resource Management Regulations -

Promulgation - Reviews - Revisions

- (a) Where necessary to accomplish the policies and goals stated in this Title and to implement the provisions of this Title, the Department shall promulgate Natural Resource practice rules and regulations that will, along with this Title, become the rules governing the conduct of any forest product or minor forest product activity or operation or any hydraulic project occurring within the boundaries of the Quinault Indian Reservation. The regulations shall establish the minimum standards and guidelines for Reservation wildlife protection and the necessary administrative procedures to achieve the policies and goals of this Title and may include reasonable application fees.
- (b) The regulations shall be administered and enforced by the Department or Quinault Indian

Nation law enforcement officers, except as otherwise provide in this Title. Enforcement shall be exclusively by civil proceedings.

- (c) The regulations adopted by the Department shall be based on the factors that significantly affect the present and future condition of Reservation forest land, wildlife and aquatic habitat.
- (d) In promulgating these regulations, the Department shall consider recommendations of persons and agencies of expertise in the fields of forestry, land use, fisheries and other fields related to natural resource practices. The Department shall take into consideration other tribal, federal and applicable state laws and shall provide for cooperation in their enforcement.
- (e) The regulations shall be continuously reviewed and may be revised from time to time by the Department as technical expertise and Reservation conditions permit. Prior to any

such revisions, the Department shall seek and evaluate recommendations of persons and agencies with expertise or interest in the subject matters.

61.04.020 Rules Establishing Classes of Natural Resource Practices - Applications for Classes of Natural Resource Practices - Approval or Disapproval

- (a) The Department shall establish, by rule, which natural resource practices shall be included in each of the following classes:

Class I: Minimal natural resource practices that have no potential for damaging a Reservation resource that require an application which must be approved or disapproved by the Department within 7 days.

Class II: Natural resource practices that have little potential for damage to a Reservation resource that require an application which must be approved or

disapproved within 7 days. Class II shall not include practices:

- (1) On lands being or declared to be converted to another use.
- (2) On lands identified in this Section or in the regulations as lands requiring a Class IV natural resource practice application.

Class III: Natural resource practices that have a significant potential for damage to a Reservation resource that require an application which must be approved or disapproved by the Department within 14 calendar days after receipt by the department.

Class III shall not included practices:

- (1) On lands being or declared to be converted to another use.
- (2) On lands identified in this Section or in the regulations as lands requiring a Class IV natural resource practice

application.

- (3) Identified in this Section or in the regulations as Class I, II or IV natural resource practices.

Class IV: Natural resource practices having a potential for major impact on critical Reservation resources that require an application which must be approved or disapproved by the Department within 30 calendar days after receipt by the Department unless the Department determines that a detailed environmental statement must be made, in which case the application must be approved or disapproved within 60 days, unless the Department promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. If the Department determines that a detailed environmental statement is required, within 10 calendar days

of the receipt of the application, it shall so notify the applicant; at least 10 days prior to promulgation of a formal order by the Department, the applicant shall be given written notice that the Department is requesting such extension. When a Class IV application involves lands to be converted to another use, the application shall be approved or disapproved within 14 business days from transmittal to the Planning Commission.

- (b) No natural resource practice shall be commenced or continued after the enactment of this Title unless the Department has received and approved an application containing all information required by this Title and the rules and regulations adopted pursuant to this Title, as now or hereafter amended, provided:
 - (1) That any person commencing a Class I, II or Class III natural resource practice prior to the enactment of this Title may continue such practice for a period of 28

calendar days if such person has submitted an application, as appropriate, to the Department within 14 calendar days after the enactment of this Title.

- (2) That any person commencing a Class IV practice prior to the enactment of this Title may continue such practice for a period of 44 calendar days if such person has submitted an application to the Department within 14 calendar days after the enactment of this Title.
- (c) If an application is delivered in person to the Department, the Department shall immediately provide a dated receipt thereof. In all cases, the Department shall immediately mail a dated receipt to the operator.
- (d) Natural resource practices shall be conducted in accordance with the natural resource practice rules, regulations, orders and directives as authorized by this Title or the natural resource practice regulations and the

terms and conditions of any approved applications.

(e) The Department shall notify the applicant, in writing, of either its approval or disapproval of the application and the specific manner in which the application fails to comply with the provisions of this Title or the natural resource practice rules and regulations.

(f) If seasonal field conditions prevent the Department from being able to evaluate the application, the Department shall issue an approval conditional upon further review within 60 days.

(g) If the Department fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved, and the operation may be commenced, provided that, this provision shall not apply where:

(1) The application involves lands to be

converted where the Planning Commission right of objection is 14 business days, which may be longer than the approval time limit.

- (2) The Department is prohibited from approving the application pursuant to this Title.

61.05 Applications/ Licenses and Permits

61.05.010 Business License Required; Other Applicable Tribal Laws; Compliance Required

- (a) A natural resource practice application shall not be approved unless the person submitting the application has obtained a Quinault Tribal business license. A person applying for an endorsement of a hauling permit, or hauling permit, may not receive such endorsement or permit until the person obtains a Quinault tribal business license, provided that, such license need not be obtained if the hauler is affiliated with an operator who has obtained a Quinault tribal business license, has listed

said hauler on the application and has paid the necessary tax on the hauler.

- (b) A natural resource practice application or application shall not be approved unless the applicant has complied with other applicable tribal laws, and is current on all payments or fines owed to the Quinault Indian Nation or an entity of the Quinault Indian Nation.

61.05.010

Approved Application Required

- (a) It shall be a violation of this Title for a person shall carry on the activities of a forest products operator or conduct an hydraulic project without an approved natural resource practice application.
- (b) A natural resource practice application shall be made to the Department. Such application shall provide the minimum following information:
- (1) The applicant's name and address and acknowledgement that all notices and, in the event a suit is brought against the

applicant by the Department, all pleadings are properly served if mailed to the applicant at the address shown on the application.

- (2) The precise location of the operation.
 - (3) The approximate duration of the operation.
 - (4) The name of the landowner and resource owner.
 - (5) A list of cutters, contractors, employees and/or haulers who will be affiliated with the operation (when appropriate).
 - (6) The name of the designated agent (when appropriate).
 - (7) Such other information as the Department may this Title or the rules and regulations adopted pursuant to this Title require.
- (c) The Department shall prescribe the form and content of the application and may prescribe modifications to form and content, from time

to time, as conditions warrant. The Department may require such information as it deems necessary to establish legal and operational responsibility, determine natural resource practice methods to be used and identify soil, water and other critical resource circumstances.

- (b) At the option of the applicant, the application may be submitted to cover a single natural resource practice or project or any number of activities within reasonable geographic boundaries, as specified by the Department.
- (c) The application shall indicate whether any land covered by the application will be converted or is intended to be converted to a use other than commercial timber production within 3 years after completion of the natural resource practice described in it. If the application states that any such land will be or is intended to be so converted:

- (1) The reforestation requirements of this Title and of the natural resource practice regulations shall not apply if the land is, in fact, so converted.
- (2) Completion of such natural resource practice operations shall be deemed conversion of the land to another use.
- (3) If conversion to such other use is not initiated within 3 years after completion of the natural resource practice operations, the reforestation requirements of this Title shall apply and such reforestation shall be completed within 1 additional year.
- (4) The application shall be either signed by the land owner or accompanied by a statement signed by the land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this paragraph.

- (d) When an approved application authorizes a forest product activity or hydraulic project which has a potential for causing material damage to a Reservation resource, as determined by the Department, the applicant shall, when requested on the approved application, notify the Department 2 days before the commencement of the actual operations.
- (e) Before the operator commences any forest product activity or hydraulic project in a manner or to an extent significantly different from that described in a previously approved application, there shall be submitted to the Department a new application form in the manner set forth in this Section.
- (f) The approval of an application given by the Department shall be effective for a period of 1 year from the date of approval unless the Department specifies a period of time less than one year Renewals may granted at the

discretion of the Department.

(g) Notwithstanding any other provision of this Section, no prior application shall be required for any emergency action necessitated by fire, flood, windstorm, earthquake or other emergency defined by the Department, but the operator shall submit an application, whichever is applicable, to the Department within 48 hours after commencement of such practice.

(h) An approved application for designation as a cutter or for authorization to haul forest products within the Reservation shall be necessary before a permit or endorsement is issued.

(i) No permit, license or contract issued by any agency other than the Department shall be sufficient to meet the requirements of this Title.

61.05.020

Grounds for Denial: Appeal

Where applicable, any one of the following reasons

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shall be sufficient grounds for denial of an application:

- (a) The applicant is not the real party in interest.
- (b) The Department has reasonable cause to believe that the applicant or his designated agent will not be at the site of operation to supervise the operation at least 100% of the working time of the operation.
- (c) Fraud or material misrepresentation of fact in the application.
- (d) One or more instances of failure of the applicant to comply with the provisions of this Title or its predecessor or any other tribal law, rule or regulation within the last 3 years.
- (e) Issuance of the application will allow more operations to be carried on than the Department can adequately supervise.
- (f) The applicant has committed a timber trespass within the last 3 years.

- (g) Failure to provide information required in the application.
- (h) Any of the grounds set forth for the disapproval of an application in the Quinault Tribal Code or the rules and regulations adopted pursuant to this Title.
- (i) The applicant has violated any other applicable law, rule or regulation in the past which, in the Department's judgment, provides a reasonable basis for the Department to deny the application.
- (j) The applicant has failed to pay a valid fine, payment or fee due and owing the Quinault Indian Nation or an entity of the Quinault Indian Nation.
- (k) The Department may, in its discretion, waive any of these grounds and approve an application. In such a case, the Department may condition the approval of the application on compliance by the operator with specific conditions set by the Department and related

to the grounds for denial.

- (1) An applicant denied approval may appeal the denial in accordance with this Title.

61.05.030 Conditions: Violations

The Department may approve an application subject to specific conditions and terms. Conditions or terms may be altered as appropriate and necessary after approval of the application, upon 24 hour written notice to the operator. Violations of such conditions and terms shall be deemed violations of this Title.

61.05.040 Exemptions

Employees of the Quinault Nation, when conducting tribal business may in the Departments desecration be exempted from obtaining an approved natural resource practice application.

61.05.050 Possession and Display

The operator or his designated agent shall have the approved application or a copy thereof in his possession at all times during which operations are carried on. The operator or his designated agent

shall present the application for inspection on demand from any law enforcement officer, Department employee or BIA enforcement employee.

61.05.060

Fee

The Department may charge a fee for processing an application. The fee shall be in an amount calculated to offset the costs of issuance and enforcement.

61.05.070

Deposit

As a condition of approval of an application, the Department may require the posting of a reasonable deposit. The deposit shall be posted by the applicant. The deposit shall be deposited in an account at a commercial bank in the name of the Quinault Indian Nation and shall be released to the applicant upon satisfactory completion of all conditions contained in the application. In the event that the conditions of the application are not met, the Department may declare, in writing, the forfeiture of all or part of the deposit. Forfeiture of a deposit shall be in addition to any

other remedies allowed under this Title. Return of the deposit shall not be unreasonably delayed by the Department or its agents or employees.

61.05.080

Revocation: Appeal

(a) The Department may revoke an approved application, upon 24 hours written notice to the applicant, for any of the following reasons:

- (1) The existence of any grounds for denial of an application.
- (2) Noncompliance by the operator or the operator's agents, contractors, cutters or employees with any term or condition of the application.
- (3) Conduct of the operation in a manner that violates the Quinault Tribal Code or its regulations.
- (4) Violation by the operator, his employees or agents or contractors of any other applicable law, rule or regulation which reasonably relates to the conduct of the

operation, including but not limited to, use of cutters and haulers who do not have a valid, approved minor forest product work permit or hauling endorsement.

(b) An operator whose application is revoked may appeal the revocation in accordance with this Title.

61.05.090 Minor Forest Product Work Permit Required:

Application; Fee; Display

It shall be a violation of this title for any person to engage in the activities of a cutter without having, in his or her possession, a minor forest work permit issued by the Department. The Department shall issue permits to all applicants not subject to grounds for denial and shall do so, in writing, within 15 working days of the application. If the Department fails to approve or deny the application within 15 working days, the application shall be deemed approved, and the cutter may begin working, provided that, this

provision shall not apply where the Department is prohibited from approving the application pursuant to this Title. The Department may charge a fee for the permit in an amount calculated to offset the costs of issuance and administration of the cards. The cutter shall display the permit on demand by any law enforcement officer, Department employee or BIA enforcement employee.

61.05.10 Minor Forest Work Permits - Scope of Authority:
Renewal, Reapplication

Each permit shall specify the scope of authority of the holder. Such specification may limit the holder to work as a cutter on specified tracts. Whenever a cutter changes his affiliation with an operator, he shall be required to apply for a new permit.

61.05.11 Minor Forest Work Permits - Grounds for Denial or
Revocation

The Department may deny an application for a permit or may revoke an issued permit, without prior notice, for any of the following reasons:

- (a) The applicant or cutter has no affiliation with an approved operator.
- (b) The applicant or cutter has committed timber trespass within the last 3 years.
- (c) Fraud or material misinformation in the application.
- (d) Violation of this Title or its predecessor or any other tribal law, rule or regulation within the last 3 years.
- (e) The applicant has violated any other applicable law, rule or regulation in the past which, in the Department's judgment, provides a reasonable basis for the Department to deny the application.
- (f) The applicant owes a valid fine, judgment or contract payment to the Quinault Indian Nation or an entity of the Quinault Indian Nation.
- (g) The Department may waive any such grounds and issue or continue the permit conditioned on compliance with specific written conditions related to the grounds for refusal or

revocation. A cutter whose permit is denied or revoked may appeal such decision by following the procedures of this Title.

61.05.12 Hauling Permit Required; Washington Forms; Fee; Display

- (a) It shall be a violation of this Title for any person to haul forest products without having, in his or her possession, a valid Washington hauling permit endorsed by the Department or a Quinault Indian Nation hauling permit. The Department shall endorse hauling permits or issue a Quinault Indian Nation hauling permit within 15 working days of a request for endorsement or request for a permit unless it is found that the request is subject to denial or revocation. The Department may charge a fee for the endorsement of the hauling permit or for a hauling permit. The hauler shall display the hauling permit upon demand by any law enforcement officer, Department employee or BIA enforcement employee. The hauling

permit may indicate on its face whether material hauled under the permit must be scaled and whether hauling under the permit is restricted to specific roads or hours. The Department is hereby authorized to impose such restrictions in furtherance of this Title's purposes. If the Department fails to endorse the hauling permit or issue a hauling permit within 15 working days of the request, the hauling permit shall be deemed approved, and hauling may be commenced, provided that, this provision shall not apply where the Department is prohibited from endorsing or issuing a hauling permit pursuant to this Title or the rules and regulations adopted pursuant to this Title.

- (b) The Department shall prescribe the form and content of the application for a Quinault Indian Nation Hauling permit and require such information as it deems necessary in order to satisfy the purposes of this Title.

61.05.13

Hauling Permit - Grounds for Denial of Endorsement
or Revocation of Endorsement

The Department may refuse to endorse a hauling permit or issue a hauling permit and may revoke its endorsement or revoke a hauling permit, without prior notice, for any of the following reasons:

- (a) The hauler has violated the provisions of this Title or its predecessor or any other tribal law, rule or regulation within the last 3 years.
- (b) Fraud or material misrepresentation on the request for endorsement or permit application.
- (c) Failure to provide information required in the request for endorsement or permit application.
- (d) The hauler has violated any other applicable law, rule or regulation in the past which, in the Department's judgment, provides a reasonable basis for the Department to deny the application.
- (e) The hauler owes a valid fine, judgment or contract payment to the Quinault Indian Nation

or an entity of the Quinault Indian Nation.

- (f) The Department may waive any such grounds and endorse the hauling permit or issue a hauling permit conditioned on compliance with specific written conditions related to the grounds for denial or revocation. A hauler whose request for endorsement or application is denied or whose endorsement or permit is revoked may appeal such decision pursuant to the procedures of this Title.

61.05.14

Transportation and Scaling of Minor Forest Products: Hours; Hauling Products Harvested Off-Reservation

- (a) The driver of any vehicle hauling minor forest products shall have, in his or her possession, a valid hauling permit. All vehicles hauling minor forest products shall stop for inspection when passing any scaling or check station on the Reservation. At such stops, the hauler shall exhibit the hauling permit and any other permit or card and the forest

products shall be scaled, if required. Any vehicle hauling minor forest products and passing a scaling or check station without stopping and exhibiting the hauling permit shall, along with its driver, be deemed in violation of this Title. Hauling shall be restricted to the hours between 8:00 a.m. and 5:00 p.m., provided that, no hauling shall be done on weekends or holidays. The Department is hereby authorized to modify these provisions regarding hours, upon request for such a modification received by the Department from any person holding a current hauling permit, combined with a showing for a substantial need for such modification. Denial of a modification request may not be appealed. If such a modification is granted, the Department shall promptly notify the Chief of the Quinault Nation Police Department.

- (b) Any person hauling minor forest products on the Quinault Reservation not harvested on the

Quinault Reservation shall have a valid Washington hauling permit in his possession and shall produce and display that permit at the request of any law enforcement officer, Department employee or BIA enforcement employee. Violation of this Section shall subject the person hauling the products to the enforcement and penalties Section of this Title.

61.05.15 Denial of Application: Revocation of Approved Application or Permit-Appeal

- (a) A person may appeal the Department's denial or revocation of a natural resource practices application, minor forest product work permit, hauling permit or hauling permit endorsement to the Director within 10 business days after receiving notice of the denial or revocation. The Director shall schedule a hearing on the denial, revocation no more than 10 business days from receipt of the notice of appeal. Notice shall also be given to the Department

employee responsible for the denial or revocation.

- (b) At the hearing, the operator, cutter or hauler may be represented by counsel, may present evidence and cross examine evidence against him or her. The Director shall hear all relevant evidence pertaining to the operation, reasons and events leading to the denial or revocation. The Director may inspect the site of the operation, provided that, if the Director is accompanied by Department employees, then the operator or the operator's counsel shall be afforded an opportunity to accompany the Director on the inspection.
- (c) Within 10 business days after the hearing, the Director shall provide a written decision. The decision shall be based on the evidence presented at the hearing and/or the inspection of the site of the operation. The decision may grant the application, reinstate the application or permit, revoke the application

or permit or modify the application or permit by adding or deleting specific conditions.

The Director's decision may be appealed to the Tribal Court within 20 days from the date of the Director's decision, provided that, appeals taken from decisions made by the Director under this Title shall be reviewed by the Court sitting without a jury in accordance with the rules and laws governing appeals from administrative decisions. In no event shall the Court enter a judgment for damages against the Department, the Quinault Indian Nation or an employee of the Quinault Indian Nation.

- (d) Service of all Department decisions and notices may be made by personal service or by mail to the appellant's last known address. In the event of service by mail, the decision shall be deemed received on the third day following the mailing.
- (e) An appeal of the decision shall be served on the Director and the Office of Reservation

Attorney by certified mail.

61.06 Unlawful Harvest

61.06.010 Liability

t shall be a violation of this Title for any person to willfully harvest, take possession of or injure any forest product on any land without lawful authority of the owner thereof.

61.06.020 Failure to Locate Boundary - Liability

It shall a violation of this Title for any person to harvest, possess or injure any forest product on any land without lawful authority of the owner thereof due to the failure of the person to accurately locate the land for which he or she has such authority or due to the failure of the person to accurately establish the boundary line of land for which he or she has such authority

61.06.030 Traditional, Non-Commercial Use of Minor Forest Products; Firewood - Tribal Permit

This Title and its provisions shall not apply to tribal members who are gathering minor forest products on the Reservation for personal or family

traditional, non-commercial use. This Title and its provisions shall not apply to persons who are cutting or hauling firewood under a tribal firewood permit.

61.07

Hydraulic Projects

61.07.010

Approved Hydraulic Application Required

- (a) It shall be a violation of this Title for any person to divert any stream or river or remove water from any river, stream, spring, pond, tidal area, lake, or any other body of water on the Quinault Indian Reservation, including ground waters, without obtaining an approved application to do so from the Department. It shall be a violation of this Title for any person to conduct work in or near (within 200 feet) of a stream, river, lake, tidal area, pond, groundwater, or any other body of water on the Quinault Indian Reservation without obtaining an approved application from the Quinault Department of Natural Resources to do so.

(b) The Quinault Department of Natural Resources may delegate, by regulation, the responsibility for investigating requests for, and the issuing of, hydraulic applications to any agency of the Quinault Indian Nation, or any other agency with whom the Quinault Business Committee may enter into agreement or contract for such purpose. The Quinault Department of Natural Resources or any other agency to whom the Quinault Department of Natural Resources has delegated any responsibility for issuing or investigating hydraulic applications shall consult the Fish and Game Commission, tribal fisheries and tribal forestry technicians before issuing any approved application.

(c) The Quinault Department of Natural Resources may, by regulation, condition the consideration or issuing of an approved hydraulic application on:

- (1) The payment of a permit fee.
- (2) An investigation fee sufficient to cover

the cost of providing the information necessary to decide whether or under what conditions a permit should be issued.

(3) Provision of all information required by the Department or its delegated agency.

(d) Hydraulic applications may include conditions which require the applicant to:

(1) Allow unlimited inspection by the staff of the Quinault Indian Nation.

(2) Pay for waters diverted or polluted.

(3) Pay for damage to fish spawning beds or other natural or man-made resources of the Quinault Indian Nation caused by work carried out under the application; or

(4) Agree to any other condition reasonably related to the purpose and intent of this Title.

(e) All applications requested under this Section shall be approved or denied or an alternative offered within 120 days of the filing of the request. If an application is not approved or

denied or an alternative offered with 120 days, it shall be considered to have been granted as requested.

61.08 Water Classifications

61.08.010 Types of Water - Requirements

- (a) The Department shall establish no more than 4 types of waters. These types of water shall be defined to identify all waters of the Reservation, grouped according to the size of the water, its sensitivity as a fish-supporting water or its sensitivity for other resource protection. The types of waters shall be grouped as follows:

Type 1 Water - All waters identified as a sensitive resource.

Type 2 Water - Waters not classified Type 1 water. Perennial or intermittent streams having a well-defined channel 8 feet in width or greater between ordinary high water marks along the majority of the length of the stream segment, and impoundments having a surface

area greater than 0.5 acres at seasonal low water.

Type 3 Water - Waters not classified as Type 1 water. Perennial or intermittent streams having a well defined channel less than 8 feet in width and greater than 4 feet in width between ordinary high water marks along the majority of the length of the stream segment, and impoundments having a surface area greater than 0.2 acres and less than 0.5 acres at seasonal low water.

Type 4 Water - Waters not classified as Type 1, 2 or 3 waters.

- (b) The Department shall identify those waters which are known to constitute a critically sensitive resource for purposes of fish rearing, flood control, stream bank protection, wildlife protection, water quality, and other conditions unique or critical to maintaining the life style of the Reservation residents. These waters shall be

defined as Type 1 waters and identified on a map or sketch, such map or sketch to be titled "Stream Classification Map" and be available for public review at reasonable times. Streams, stream segments and other waters may be added to or deleted from the Stream Classification Map from time to time, as conditions warrant.

- (c) The Department may, at its discretion, expand the scope of the Stream Classification Map to include Type 2, 3 and 4 waters. The classification of these waters shall be updated from time to time, as the physical characteristics of streams and other waters change.

61.09

Reforestation

61.09.010

Reforestation - Requirements - Procedures - Bond

- (a) After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the Department shall be completed within 4 years.

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The Department shall require a natural resource practices applicant to submit a reforestation plan with any application, except where no reforestation is required under tribal law or regulation. The Department may not approve an application unless a reforestation plan is submitted and has been approved by the Department.

- (1) Provided that, a longer period may be authorized if seed or seedlings are not available.
- (2) Provided further, that a period of up to 5 years may be allowed where a natural regeneration plan is approved by the Department.
- (3) Upon the completion of a reforestation operation, a report on such operation shall be filed with the Department. Within 12 months of receipt of such a report, the Department shall inspect the reforestation operation and shall

determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

- (4) The natural resource practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is incompatible with timber growing.
- (b) The Department shall establish requirements for and limitations on forest site preparation sufficient to protect Reservation resources from unreasonable damage while, at the same time, ensuring site conditions suitable for adequate reforestation.
- (c) The natural resources practice regulations may identify classifications of forest land which have the likelihood of conversion to a use other than commercial timber operations.

Reforestation requirements may be modified or eliminated on such lands.

- (d) The Department may require an operator or timber owner to post a reforestation bond prior to approving an application for a Class III or IV natural resource practice to ensure that reforestation is accomplished in accordance with tribal laws and regulations.

61.10

Coastal District

61.10.010

Coastal District - Restrictions - Exceptions

- (a) The purpose of this section is to provide protection for and retain the natural beauty of the lands and other resources within the Coastal District. Forest practice operations within the Coastal District shall be a Class IV natural resource practice.
- (b) The Department shall develop standards for natural resources practices within the Coastal District which shall include, but shall not be limited to, the following:
 - (1) The removal of standing, live timber from

any proposed harvest unit shall not exceed 1/3 of the merchantable volume of timber standing on the proposed harvest unit during any 10 year period of time, provided that, the Department may approve additional harvest when, in the opinion of the Department, such removals are necessary to control, salvage or abate wind-throw, insect or disease infestation or other casualty.

- (2) The use of heavy equipment within the Coastal District shall be restricted to minimize damage to soil, vegetation and water resources.
- (3) Shoreline protection strips of appropriate width but no less than 200 feet, shall be left undisturbed along coastal bluffs, beach fronts and coastal wetlands and marshes when the Department determines that such control is necessary to protect the water resource, wildlife

resource, prevent accelerated erosion or protect against windstorm damage. Minor clearing may be allowed within 200 feet of coastal beaches, beach fronts, coastal wetlands and marshes in those areas where such clearing is authorized by the Quinault Indian Nation's zoning laws or regulations and the clearing activity will not harm the water resource, wildlife resource, accelerate erosion or cause potential windstorm damage.

- (4) Upon completion of the natural resource practice, slash abatement and site rehabilitation shall be accomplished, according to the approved plan, to minimize the residual damage to the aesthetic and recreational values of the District and to the extent reasonably possible, return the land to the condition that existed prior to the natural resource practice.

61.11 Fire Control

61.11.010 Fire Controls - Policy - Requirements

(a) The Department shall evaluate the risk of wild-fire hazard on Reservation lands and promulgate regulations for forest fire prevention and suppression which shall include, but not be limited to rules, governing:

- (1) Required fire tools and equipment.
- (2) Fire watchmen.
- (3) Fire drills.

Provided that, such regulations shall, in no respect, be less stringent than those required under laws of the state of Washington.

(b) The Department may identify areas of extreme fire hazard and establish special regulations to deal with conditions which exhibit a greater than normal fire risk.

(c) The Department may enter into cooperative and/or contractual agreements with other persons or agencies for fire protection and

fire suppression support, as necessary to protect Reservation resources.

61.12

Enforcement

61.12.010

Civil Enforcement; Civil Money Penalty; Restitution; Operator Responsibility

- (a) This Title is civil in nature and applies to Indians and non-Indians alike.
- (b) Violations of the requirements of this Title regulations adopted pursuant to this Title, conditions or terms of an approved Natural Resource Practices Application, conditions or terms of a hauling permit or endorsement or Minor Forest Product Work Permit, or orders issued by the Department or Director shall constitute a violation of This Title and may be enforced by injunction and any combination of civil money penalties, rehabilitation to the land, water and wildlife, enforcement costs, restitution and forfeiture. Appointed legal representatives of the Quinault Indian Nation are empowered, under this Title, to

pursue civil enforcement remedies on behalf of the Nation and individuals whose ownership interests are affected by violations of this Title.

- (c) Any license, permit, identity card, or other authority granted by the Quinault Nation to any person, to commit any act or engage in any activity governed by this Title or regulation made pursuant to this Title, shall be forfeited and void if such person violates this Title or regulations made pursuant to this Title governing the activity allowed by the license, permit, etc. and shall be suspended during the pendency of any proceedings under this Title.
- (d) Every person who violates this Title, as now or hereafter amended, shall be required to pay (1) civil monetary damages in the full amount of the costs of detecting and repairing or rehabilitating any damages done to the land, wildlife or water as a result of the violation, (2) the costs of enforcement and

collection of such damages, (3) 3 times the fair market value of any timber or forest products harvested, possessed, injured or destroyed, (4) a civil penalty not to exceed \$5,000.00 for each violation and (5) court costs and attorney fees and (5) restitution.

(e) Violations of a separate term or condition of a permit or approved application, a rule, regulation or provision of this Title shall each constitute a separate violation regardless of whether the violations are the result of single occurrence or transaction. Each day a violation occurs shall also constitute a separate violation.

(e) Operators are liable for the violations committed by their affiliated cutters and haulers, contractors or employees. The Quinault Indian Nation may pursue civil remedies and penalties against operators for violations committed by their affiliated cutters, haulers, contractors or employees.

61.13.020 Civil Enforcement Procedures

Civil enforcement proceedings under this Title shall be conducted in accordance with the Tribal Court Rules of Civil Procedure except that the parties shall not be entitled to a trial by jury.

61.13.030 Products and Equipment Subject to Seizure; Forfeiture; Probable Cause

- (a) Any equipment, including vehicles, used in violation of this Title or used to effect a violation of this Title, may be seized and may be forfeited to the Quinault Indian Nation. Any timber or minor forest products cut, harvested, transported or possessed in violation of this Title may be seized and may be forfeited to the Quinault Indian Nation.
- (b) Whenever any law enforcement officer has probable cause to believe that minor forest products or timber are being cut, harvested, transported or possessed in violation of the provisions of this Title, such officer may seize and take possession of the minor forest

products, timber or equipment used to effect the violation of this Title.

61.13.040

Seizures and Civil Forfeiture of Property - Procedure

(a) When property or items are seized pursuant to the provisions of this Title, the person seizing said items must at the time of seizure issue a receipt for all items seized of a form substantially similar to the form provided as Appendix A to this Title. If the owner or claimant is not present to receive the receipt the person seizing the items must follow the procedure outlined in subsection (i) below.

(1) Contents of receipt The receipt must contain the date of the seizure, Incident Number associated with the seizure, a complete description of the item seized including any existing damage to the item, the serial number of the item (if applicable), the number of units of a particular item, the estimated value

of the item, an indication of whether the item is perishable, and space for the owner or claimant to register any dispute over the description, etc. of any item.

- (2) Receipt to be signed The receipt must be signed by the person seizing the item and by the claimant or owner of the item seized.
- (3) Disposition of the receipt A copy of the receipt must be given to the owner or claimant at the time of seizure. The original of the receipt is to be attached to and remain with the incident report.
- (4) Failure of the claimant or owner to sign receipt If the claimant or owner of the receipt fails or refuses, or is otherwise unable to sign the receipt, when practicable the items seized shall immediately be brought to the Tribal Police Department and a complete inventory of the item or items seized

shall be made in the presence of the shift supervisor or another law enforcement officer. The inventory shall be signed by the person seizing the item or items and witnessed by the shift supervisor or another law enforcement officer. The inventory shall contain the same information as the receipt described above (a receipt may serve as an inventory) and shall be kept with the incident report.

- (2) The owner or claimant may, at any time, ask for a receipt based upon the inventory and may register any dispute over the description, etc. of any item on the receipt.
- (3) Failure to issue receipt Failure by the seizing person to issue a receipt at the time of seizure shall be a bar to any forfeiture action under this Title and will require the immediate return of all

seized items to the lawful owner or claimant.

(2) Filing of Civil Action The Quinault Indian Nation shall file a forfeiture motion at the same time complaint is filed against the alleged violator(s). A hearing on the forfeiture motion shall be held at the same time as the hearing on the underlying complaint unless the seized property has been forfeited or returned in a prior proceeding. If a complaint is not filed within 60 days from the date the property was seized, the Quinault Indian Nation shall bring a separate civil action to forfeit the property.

(3) Notice Notice of a separate action to forfeit property shall be given to the claimant of the property seized by certified mail.

(4) Procedure Except as otherwise provided

in this Title, the Quinault Tribal Rules of Civil Procedure shall apply to civil actions to obtain forfeitures of property for violation of this Title.

- (5) Emergency Forfeitures Upon a determination by the person seizing any item, or any person in the same department charged with making such a determination, that said item is perishable and will lose all, or substantially all, of its value if not sold or otherwise disposed of, an action may be brought for emergency forfeiture of the seized item or items. (A form motion and order is attached as Appendix B).
- (i) The Tribal Court shall have exclusive jurisdiction of such actions;
- (ii) The action must be filed by the person who made the seizure, or another person of the same department charged with

- bringing such actions, within ten (10) court days of the seizure;
- (iii) Any action for emergency forfeiture shall be *ex parte* in nature and no notice need be given of the action, provided that the owner or claimant may appear and ask to be heard on the record;
- (iv) If the owner or claimant appears, the court shall set a hearing in the matter no later than the end of business of the next court day;
- (v) Any action for emergency forfeiture must be reviewed by the court within one (1) day of the bringing of such action;
- (vi) Failure to bring an emergency forfeiture action within the time limit set under section (ii) above shall bar any emergency forfeiture action without due notice to the owner or claimant;
- (vii) Any moneys received from emergency forfeiture shall be held by the Nation in

an escrow account signified by the Incident Number under which the seizure occurred and held therein pending the filing of any action by the Nation, through the Nation's appointed attorney, to recover said moneys.

- (6) Procedure for Seizure In the event of a seizure, whether any item was the subject of an emergency forfeiture action or not, the rightful owner, lien holder, or claimant may petition the court in a separate action for the return of any item seized, provided that;
- (i) Such actions shall be governed by the Quinault Tribal Court Rules of Civil Procedure;
- (ii) The seizing party or department shall be designated as the Respondent and the person filing an action under this section shall be designated the Petitioner;

(iii) The Nation's appointed attorneys is here-with designated the representative of the person or department named as Respondent and shall be duly notified by the Tribal Court of any actions filed under this section;

(iv) In all actions brought under this section the Tribal Court may:

A. Order the immediate return of any or all of the items seized to any person having lawful claim to said items upon a showing that a reasonable person could not have believed that the items seized were used or obtained in violation of this Title;

B. Order that the items seized shall remain in the custody of the person or department that seized the items;

C. Order that any or all of the items be returned to any person having

lawful claim to said items in
exchange for bond or cash surety

61.13.050

Proceeds of Forfeitures

Any cash or other proceeds from forfeiture of products, equipment or other goods under this Title shall be applied, in the following order:

- (a) The costs, including court and related expenses, of detecting the violation, seizing, storing and handling any goods, prosecuting the case, collecting any judgment, selling forfeited goods and other goods and other costs reasonably associated with enforcing this Title.
- (b) The cost of rehabilitating the land, wildlife and waters affected by the violation.
- (c) Compensation for damages or other loss suffered by the rightful owner of any minor forest products or timber when such damage or loss leads to the forfeiture proceeding, provided that, any person wishing to claim such compensation must make a written demand

to the Court at least 1 day prior to sale or other disposal of forfeited goods. This compensation shall not be available to the owner if the owner is also the violator whose goods are being forfeited.

(d) Any fines or penalties imposed as a result of the violations.

(d) Any remaining funds shall be turned over to the Court for forwarding to the Department which shall use the funds solely for the enhancement of the land, water and wildlife of the Quinault Reservation.

61.13.060

Custody of Seized Property

All property seized pursuant to this Title shall be kept in the custody and/or control of the Quinault Tribal Police Department unless otherwise ordered by the Court. The property shall be kept available for disposal by order of the Court in forfeiture or other judicial proceedings.

61.14

Stop Work Order

61.14.010

Stop Work Order - Grounds - Contents - Procedures

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(a) The Department may serve upon a person a stop work order which shall be a final order of the Department if there is a reasonable belief that:

- (1) A violation of the provisions of this Title or the rules and regulations adopted pursuant to this Title has occurred or is occurring; or
- (2) There is or has been a violation or deviation from the terms or conditions of an approved application or permit; or
- (3) Immediate action is necessary to prevent continuation of or to avoid material damage to a Reservation resource.

(b) The stop work order shall set forth:

- (1) The specific nature, extent and time of the violation, deviation, damage or potential damage.
- (2) An order to stop all work connected with the violation, deviation, damage or potential damage.

- (3) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to Reservation resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource, and/or those courses of action necessary to prevent continuing damage to Reservation resources where the damage is resulting from the natural resource practice activities but has not resulted from any violation, unauthorized deviation or negligence.

61.14.020

Failure to Obey Stop Work Order - Departmental
Action Authorized - Liability of Owner or Operator
For Costs

- (a) When a person fails to obey a stop work order, or having undertaken such course of action as

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required by the stop work order, but fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action, and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual direct cost thereof, in addition to any other fines, restitution or costs allowed under this Title. Such amount shall become a lien on such forest land.

- (b) The Department may take immediate action to prevent continuation of or avoid material damage to public resources, including but not limited to, seizure of the operator's equipment. The Department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such activity was being conducted. The operator, timber owner or forest land owner, shall be jointly and severally liable

for such emergency costs in addition to any other remedies allowed for under this Title. Such costs shall become a lien on the forest land.

- b) If the costs expended under this section are not paid to the Department within 15 days after completion of any activity by the Department and written notice of the amount due and owing is mailed to the liable parties, a Notice of Infraction shall issue.
- (c) Failure to comply with a stop work order shall be a distinct violation of this Title.

61.15 Notice to Comply

61.15.010 Notice to Comply

- (a) If there is a reasonable belief that a violation of this Title or regulations adopted pursuant to this Title, a deviation, material damage or potential for material damage to a Reservation resource has occurred or is occurring and the Department determines that a stop work order is unnecessary, then the

Department may issue and serve upon the operator or land owner a notice, which shall clearly set forth:

- (1) The specific nature, extent and time of failure to comply with the approved application or identifying the damage or potential damage; and/or
- (2) The relevant provisions of this Title or of the forest practice regulations relating thereto.
- (3) The right of the operator or landowner to a hearing before the Department; and
- (4) The specific course of action ordered by the Department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to Reservation resources which resulted from any violation, unauthorized deviation or willful or negligent disregard for potential damage to a Reservation

resource, and/or those courses of action necessary to prevent continuing damage to Reservation resources where the damage is resulting from the natural resource practice activities but has not resulted from any violation, unauthorized deviation or negligence.

- (b) The Department shall mail a copy thereof to the forest landowner and the timber owner at the addresses shown on the application, showing the date of service upon the operator.
- (c) If a person fails to undertake the course of action contained in the Notice to Comply the Department may issue a Stop Work Order and/or a Notice of Infraction.
- (c) Failure to undertake the course of action contained in the Notice to Comply constitute a distinct violation of this Title.

61.16

Notice of Infraction

61.16.010

Notice of Infraction-Content

- (a) The Department or any law enforcement officer

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shall serve a Notice of Infraction on any person who has been issued an approved application where there is a reasonable believe that:

- (1) A violation of the provisions of this Title or the rules and regulations adopted pursuant to this Title has occurred or is occurring; or
- (2) There is or has been a violation or deviation from the terms or conditions of an approved application or permit; or
- (4) There is a failure to comply with a Stop Work Order, Notice to Comply or final order of the Department or final decision by the Director after a hearing.

(b) A Notice of Infraction shall be contain the following:

- (1) The specific nature, extent, and time of the violation(s), and the provisions, rules, regulations, terms or conditions violated.

- (2) A copy of the receipt of any items, products or equipment seized.
 - (3) The amount of the costs, fines, and restitution authorized by this Title and imposed by the Department.
- (c) Notwithstanding any other provision of the Quinault Tribal Code, the Notice of Infraction may be personally served or mailed to a person's address as shown on an application.
- (d) If the amount of the costs, fine and restitution contained in the Notice of Infraction are not paid within 15 days from the date the Notice of Infraction is mailed, upon the request of the Department, the Nation's appointed attorney shall bring an action in Tribal Court.

61.17

Citation

61.17.010

Citation-Content

- (a) Where law enforcement officer or Department employee has a reasonable belief a person has

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violated this Title or the rules and regulations adopted pursuant to this Title and the person has not filed an application with the Department, the person shall be issued a citation.

(b) A citation shall contain the following:

- (1) The time of the violation(s), and the provisions, rules, regulations, terms or conditions violated.
- (2) A copy of the receipt of any items, products or equipment seized.
- (3) The amount of the costs, fines, and restitution authorized by this Title and imposed by the Department.
- (4) A certification by the person issued the citation that he or she has been served the citation and is a party to a lawsuit and that the address indicated on the citation is the person's true and correct address and that all further notices and pleadings are properly served if mailed

to that address.

- (c) If the amount of the costs, fine and restitution contained in the citation are not paid within 15 days from the date the citation is served or mailed, upon the request of the Department, the Nation's appointed attorney shall bring an action in Tribal Court.

61.18.010

Limitation

- (a) No person shall be under any obligation under this Title to prevent, correct or compensate for any damage to Reservation resources which occurs more than 2 years after the date of completion of the activities or operations involved, exclusive of reforestation, unless such operations or activities were not conducted in accordance with natural resource practices rules and regulations, provided that, this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing

road maintenance. (b) No action to recover damages for unlawful harvest or violations of this Title shall be filed more than 2 years after the date the damage or violations occur or were discovered or could have been reasonably discovered, whichever is later.

61.18.010

Inspection - Right of Entry

(a) The Department shall make inspection of forest lands, before, during and after the operation or activity as necessary for the purpose of ensuring compliance with this Title, the regulations adopted pursuant to this Title and to ensure that no material damage occurs to the natural resources of the Reservation as a result of such practices.

(b) Any duly authorized representative of the Department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this Title and the regulations adopted pursuant to this Title..

61.19.010

Civil Complaints

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This title shall be enforced by civil complaint in the Courts of the Quinault Indian Nation and, where necessary, in other courts of competent jurisdiction. Notwithstanding any other provision of this Code, a civil complaint filed in the Courts of the Quinault Indian Nation shall be served by mailing a copy of the complaint by certified mail to the address provided by the party defendants on any application filed with the Department or any citation issued by the Department.

61.20.010

Actions affecting Water

All waters, including ground waters, of the Quinault Indian Nation or the Quinault Indian Reservation are hereby found to be necessary for the conservation of fish and wildlife on the Quinault Indian Reservation. It shall be, unless otherwise stated, a violation of this Title for any person to commit any act affecting the flow, quality, fish productivity or quantity of waters in any stream, lake, or other body of water within the Quinault Indian Reservation or elsewhere within

tribal jurisdiction except in accordance with this Title or other applicable tribal laws.

61.21.010

Failure to Obtain License or Permit or to Pay Tax

- (a) It shall be, unless otherwise stated, a violation of this Title for any person, required by this Title, or by regulation adopted pursuant hereon, to pay a specific tax or obtain a specific license, permit or written authorization, to commit the specific act requiring a tax, license, permit or written authorization without paying the tax or obtaining the necessary license, permit or written authorization.
- (b) Any person engaged in any activity governed or permitted by this Title shall have on his or her person any license, permit, identification card, or other document required by regulations adopted pursuant to this Title while engaged in such activity. Failure to have a required document on one's person shall be a violation of this Title.

(c) No license, permit, identification card, or other document required by this Title or regulations adopted pursuant to this Title shall be transferable. All such documents shall be signed by the holder. A transferred document shall be confiscated and shall be void.

61.22.010 Aiding and Abetting

It shall be, a violation of this Title for any person to aid or abet another person in perpetuating a violation of this Title or any regulations duly adopted pursuant to this Title, or attempt any act which violates this Title or any regulation duly adopted pursuant to this Title.

61.23.010 Cooperation With Public Agencies - Grants And Gifts

The Department shall represent the Tribe's interest in matters pertaining to forestry, natural resource practices, forest land fire control, hydraulic projects and stream protection and may consult with and cooperate with state and federal agencies, as well as other agencies in the study and enhancement

of these matters. The Department is authorized, subject to approval of the Business Committee, to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Title.

61.24.010 Statutes Not Modified

Nothing in this Title as now or hereafter amended shall modify or waive any requirements to comply with federal statutes or other permit requirements under the Code, provided that, compliance with the requirements of this Title regarding hydrologic structures shall constitute adequate compliance with the hydrologic structures Section of this Title.

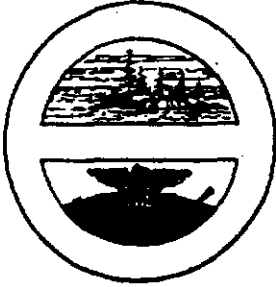
61.25.010 Effective Date

This Title shall become effective 30 days after the date of official adoption. On the effective date of this Title former Titles 61 and 62 shall be deemed repealed.

61.26.010 Saving Clause, Severability Pending Actions

Rev. 9/95

If any paragraph, sub-paragraph, clause, sentence or phrase of this Title or regulations adopted pursuant to this Title shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining portions of the Title, and those remaining portions shall remain in full force and effect and to this end, provisions of this Title and any regulations adopted hereunder are declared severable. Any action pending at the date of enactment of this Title shall not be affected by enactment of this Title, and the action shall proceed pursuant to prior provisions of the Quinault Tribal Code or regulations enacted pursuant thereto.



Quinault Indian Nation

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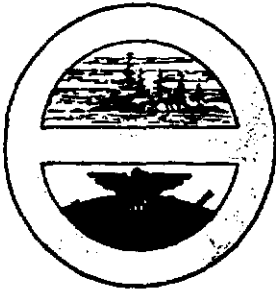
MEMO

To: Legal
From: Margie Valdillez, *SM* Secretary Quinault Indian Nation
Subject: Title 61
Date: October 24, 1995

Action of the Quinault Business Committee for: October 23, 1995.

APPROVED DENIED TABLED OTHER

Move to Approve.



Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360)276-8211

RESOLUTION NO. ~~95-66-73~~ QUINAULT BUSINESS COMMITTEE

WHEREAS, the Quinault Business Committee is the governing body of the Quinault Indian Nation; and,

WHEREAS, under Article V, Section 3 (k) and (p) of the Constitution of the Quinault Indian Nation, the Quinault Business Committee is charged with the duty of protecting and managing the wildlife, natural resources, land and timber of the Nation; and,

WHEREAS, the Quinault Business Committee finds that current Titles 61 and 62 of the Quinault Tribal Code of Laws, which were enacted to protect and manage the natural resources, land and timber of the Quinault Indian Nation is outdated, confusing and no longer provides adequate management of the natural resources, timber and land of the Quinault Indian Nation; and,

WHEREAS, the proposed amendments to Title 61 of the Quinault Tribal Code better reflects the policies of the Quinault Indian Nation and better addresses the protection of the management of natural resources than the current Titles 61 and 62 and consolidates the laws regarding such management into one Title, Title 61; and,

WHEREAS, public hearings were held in Queets and Taholah on September 18 and 19 1995, on proposed amendments to Title 61 and 62 of the Quinault Tribal Code and comments taken at those hearings on the proposed Title;

NOW, THEREFORE, BE IT RESOLVED that the attached amended Title 61 is enacted into law and Title 62 is repealed; and,

BE IT FURTHER RESOLVED, that the above provision shall take effect January 1, 1996.

Pearl Caporman-Baller
Pearl Caporman-Baller, Chairman
Quinault Business Committee

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the Business Committee at Taholah, Washington, on the 23rd day of October 1995, at which time a quorum was present by a vote of 7 FOR, 0 AGAINST and 1 ABSTAIN.

Margie Valdillez
Margie Valdillez, Secretary
Quinault Business Committee

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TITLE 52

BEACH LANDS

A TITLE FOR THE PRESERVATION, PROTECTION, AND USE OF BEACH LANDS OF THE QUINAULT INDIAN RESERVATION.

WHEREAS by Executive Order of November 4, 1873, the Quinault Indian Reservation was set aside, pursuant to the Treaty of July 1, 1855, 12 Stat. 971, as land necessary for the livelihood of the Quinault Indians and certain "other tribes of fish-eating Indians, which land included beach lands along the Pacific Ocean above the "low water mark"; and

WHEREAS, it is generally recognized that the Indians of the Quinault Reservation have, beyond the memory of man, used the beach lands along the Pacific Ocean within the Reservation freely, continuously and uninterruptedly for the purposes of fishing and the taking of shellfish, for the taking of driftwood for firewood, for recreational purposes, and other purposes; and that such uses by the Indians of the Quinault Reservation have been as a result of the ownership of the tidelands and the rights established in the remainder of beach lands by custom, tradition, practice and long and continuous use; and,

WHEREAS, it is necessary for the peace and welfare of the Indians of the Quinault Reservation to preserve, maintain, and protect the rights of the Indians of the Quinault Reservation in the continued use of the beach lands and to adopt reasonable regulations on the use thereof so as to prevent any obstruction, barrier, encroachment, abuse, or interference with the established

use of such beach lands, and to provide for the enforcement thereof,

NOW THEREFORE, the Tribal Council of the Quinault Tribe does ordain as follows:

52.01.010 Description of Beach Lands

"Beach Lands" means any lands seaward of the line of natural vegetation along the Pacific Ocean, being the extreme seaward boundary of compact natural vegetation which spreads continuously inland. In cases where there is no clearly marked vegetation line, the "line of natural vegetation" shall follow a constant line of elevation, being the average elevation of the clearly-marked line of vegetation on each side of the unmarked area.

52.02.010 Construction on Beach Lands

It shall be an offense for any person to create, erect, maintain, or construct any building, obstruction, barrier, restraint of any nature whatsoever within the beach lands as defined in 52.01.010, without having first obtained a written permit from the Business Committee of the Quinault Tribal Council. No permits shall be given for the area below the line of mean high tide except as provided in 52.06.010. A permit for the construction within the area above the line of mean high tide shall be granted only at the discretion of the

Quinault Business Committee and only after it is clearly shown that such construction will not be inconsistent with the provisions of this Title nor interfere with the rights of the Indians of the Quinault Reservation to freely and uninterruptedly use the beach lands for the purposes which have long been established and that such construction will have no damaging effect upon the marine life or cleanliness of water or air in and along said beach. The Business Committee is authorized to adopt rules and regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore. Anyone who violates the provisions of this Section shall be deemed to be in trespass of the property rights of the Indians of the Quinault Reservation in and to the beach lands, and shall be required to remove such obstruction, barrier, or interference, to cease from further obstruction and interference and shall be liable for all damages caused thereby. The Business Committee is directed to cause necessary and appropriate legal actions to be filed in courts of competent jurisdiction to enforce the provisions contained in this Section and to take such other lawful actions as may be appropriate.

52.03.010

Destruction of Beach Lands

It shall be an offense for anyone to use the beach lands in such a manner that would tend to destroy the natural beauty or pollute the beach lands, interfere with the established use thereof by the Indians of the Quinault Reservation or which would tend to create a nuisance thereon. The following rules and regulations covering the use thereof are hereby adopted.

(a) No person shall deposit or willfully permit the deposit of any debris, rubbish, or refuse upon the beach lands.

(b) No person shall deface or destroy the natural beauty of the rocks, cliffs, vegetation and other objects of nature upon or within the beach lands.

(c) No sand, rock, mineral, marine growth, drift-wood, fish, wildlife, agates or souvenirs or other product of the beach lands shall be taken from the beach lands by anyone, except pursuant to the terms and conditions of a written permit first obtained from the Quinault Business Committee. No permit shall be issued unless it is shown that the removal will not be inconsistent with the conservation of the natural resources of the beach lands. The Business Committee is authorized to adopt rules and

regulations for the issuance of such permits and to prescribe reasonable fees to be charged therefore.

(d) No person shall set or permit any fire to be set upon the beach lands, except pursuant to permits issued by the Business Committee in areas permitting the setting of camp fires, as provided herein.

(e) No person shall erect any tent or overnight shelter upon the beach lands or use the beach lands as an overnight camping area, except pursuant to permits issued by the Business Committee in those areas specifically designated and posted by the Business Committee as overnight camping areas, as provided herein.

(f) No person shall operate or park or permit the operation or parking of any motor vehicle upon the beach lands, except in areas specifically designated and posted by the Business Committee as permitting such operation or parking, as provided herein.

(g) No person shall be permitted upon the beach lands in an intoxicated and disorderly condition, or shall engage, while on the beach lands, in any acts of indecency or immorality.

(h) No person shall violate any rules and regulations subsequently adopted for the use of the beach lands by the Quinault Business Committee.

(i) No person, other than a member or employee of the Quinault Nation acting in the course of his or her employment, shall operate, land, park, moor or permit the operation of any waterborne craft or aircraft upon the beach lands, except when specifically permitted by regulations adopted by the Quinault Business Committee which may, by regulation, establish a permit and fee system for such fee use of beach lands.

(j) A violation of this Section shall be considered a Class B violation of Title 51 of the Quinault Tribal Code and shall subject violators to criminal or civil prosecution, in accordance with the provisions of Title 51.

52.04.010

Development of Beach Lands

The Business Committee is authorized to cause a study of the beach lands to be made to determine the feasibility of designating and developing certain areas of the beach lands for limited additional uses, such as areas where camping, overnight camping or the operation and parking of motor vehicles may be permitted. Pursuant to such study, the Business Committee is authorized to prepare

plans for development of the beach lands, to classify the beach lands as to such uses and to designate areas where such activities may be permitted. Provided however, that no such area designated and developed for the limited use, such as camping, overnight camping or motor vehicle area, shall be opened for such additional limited use until the Business Committee shall have adopted adequate rules and regulations to control the use thereof, not inconsistent with the purposes of the Title, have adequately posted such areas designating the use permitted and have provided adequate means for the enforcement of the additional limited use in such area.

52.05.010

Enforcement

Any person who violates any of the rules and regulations for the use of the beach lands of the Quinault Reservation shall be requested to immediately leave the beach lands. If he fails to do so or returns before paying for any damage caused by such nuisance and trespass, he may be prosecuted in the Tribal Court or physically ejected from the Reservation. In addition, any equipment or property involved in the violation, such as surf boards, camping equipment, etc., may be confiscated.

52.06.010

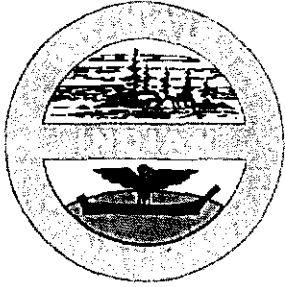
Business Committee Rights

Nothing in this Title shall be deemed to diminish the right of the Quinault Business Committee to lease or permit rights-of-way over and across the beach lands for the benefit of the Indians of the Quinault Reservation, except that any such lease or permit affecting beach lands within the Quinault Indian Reservation shall be subject to all the provisions of this Title.

52.07.010

Business Committee Enforcement

When the Business Committee determines that the regulatory provisions herein provided can be reasonably enforced, it is authorized to open, subject to all the restrictions herein provided, all or any portion of the Quinault beaches which were heretofore closed. The Business Committee is also authorized to subsequently close all or any portion of the beach lands so opened if they find that the rules and regulations herein provided or the rules and regulations adopted by the Business Committee pursuant to this Title, cannot be adequately enforced and to continue such closure until means of adequate enforcement have been found.



Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360) 276 - 8211

QUINAULT BUSINESS COMMITTEE

RESOLUTION NO. 12 - 48 - 91

WHEREAS, the Quinault Indian Nation has inherent sovereign governmental powers to protect and promote the health, safety, and/or general welfare of the people of the Quinault Indian Nation (the "Nation"); and

WHEREAS, the Quinault Business Committee is the duly elected governing body of the Nation, under authority of the Nation's Constitution, Article V, Section 3, adopted March 22, 1975, to provide for the execution and enforcement of laws of the Nation; and

WHEREAS, the Quinault Business Committee (QBC) approved a Beach Pass Policy and said policy is inconsistent with Title 52 – Beach Lands; and

WHEREAS, Title 52 authorizes the QBC to adopt regulations related to the use, preservation and protection of the Nation's beach lands; and

WHEREAS, the QBC recently took official action to close the Nation's beach lands to use by anyone other than enrolled members of the Quinault Indian Nation and desires to adopt regulations confirming that; and

WHEREAS, the QBC hereby determines that the provisions of Title 52 cannot be reasonably or adequately enforced and exercises its authority in Section 52.07.010 of Title 52,

NOW THEREFORE BE IT RESOLVED that the Quinault Business Committee rescinds and revokes its previously approved Beach Pass Policy, and

NOW THEREFORE BE IT FURTHER RESOLVED that the Quinault Business Committee hereby revokes all beach passes and permits previously issued and directs the Office of the Attorney General to send written notice to all person issued said passes and permits, and

NOW THEREFORE BE IT FURTHER RESOLVED that the Quinault Business Committee approves the attached Title 52 regulations pertaining to beach use permits and closing its beach lands to use by all persons other than enrolled members of the Quinault Indian Nation except as provided in the attached regulations; and

Fawn R. Sharp, President
Quinault Indian Nation Business Committee

CERTIFICATION

I hereby certify that the Quinault Business Committee duly adopted the above resolution at a meeting of the Business Committee at Taholah, Washington, on the 25th day of June 2012, at which time a quorum was present by a vote of 7 for and 0 against and 1 abstaining.



Lafosha Underwood, Secretary
Quinault Indian Nation Business Committee

RESOLUTION NO. 12 - 108 - 91

BEACH USE REGULATIONS PURSUANT TO TITLE 52 – BEACH LANDS

These regulations are promulgated by the Quinault Business Committee pursuant to section 52.07.010 of Title 52. These regulations are promulgated on the ____ day of June, 2012, to take effect immediately and remain in effect until rescinded.

R52.01 Beach Lands of the Quinault Indian Nation, as defined in section 52.01.010 of Title 52, are closed to use by any person other than an enrolled member of the Quinault Indian Nation except as provided herein.

R52.02 Persons who are not enrolled members of the Quinault Indian Nation may accompany enrolled members of the Quinault Indian Nation on the Beach Lands of the Quinault Indian Nation, but must remain in visual proximity to said enrolled member of the Quinault Indian Nation and are subject to and must comply with all requirements of Title 52.

R52.03 Staff and contractors of the Quinault Indian Nation may be present on the Beach Lands of the Quinault Indian Nation to the extent necessary to perform their job duties or contract obligations.

R52.04 Those persons who obtain required permits from the Quinault Indian Nation pursuant to Title 51 for the purpose of participating in an authorized, open guided fishery may use the Beach Lands of the Quinault Indian Nation solely for the purpose of participation in said fishery, and are subject to and must comply with all requirements of Title 52.

R52.05 The Quinault Business Committee may issue permits to or otherwise authorize persons who are not enrolled members of the Quinault Indian Nation to use the Beach Lands of the Quinault Indian Nation at their sole discretion and under any conditions it so deems. Such persons are subject to and must comply with all requirements of the Quinault Indian Nation.

R52.06 Use of the Beach Lands of the Quinault Indian Nation by any person other than an enrolled member of the Quinault Indian Nation automatically subjects said person to the civil jurisdiction of the Quinault Indian Nation.

R52.07 Unlawful or unauthorized use of the Beach Lands of the Quinault Indian Nation subjects said user to prosecution for trespass under federal law.

TITLE 48
LAND USE AND DEVELOPMENT CODE

48.01 Authority, Purpose, Scope.

48.01.010 Authority.

- (a) Notwithstanding the issuance of any patent, the jurisdiction and governmental power of the Quinault Indian Nation shall extend to: (i) all lands, resources and waters reserved to the Quinault Nation pursuant to the Treaty of Olympia, 12 Stat. 971, established by Executive Order dated November 4, 1873 (1 Kapp. 923) and to all persons acting within the boundaries of these reserved lands or waters; (ii) all lands or waters held by the United States in trust or reserved by the Quinault Nation for the use and benefit of any member of the Quinault Tribe when such lands or waters are not within the boundaries of an established Indian Reservation; and (iii) all members of the Quinault Nation while such members are within the boundaries of the United States of America. (Quinault Indian Nation Constitution, Article 1, Section 1).

By solemn treaty with the Quinault Nation proclaimed by President James Buchanan on April 11, 1859, 12 Stat. 971, the United States agreed to establish a reservation for the Quinault Nation and promised that, "no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or the Indian Agent."

- (b) By Executive Order of November 4, 1873, 1 Kapp. 923, President Ulysses S. Grant, in compliance with the treaty, established the Quinault Reservation at its present location, within the area where the Quinault Indians had lived since time immemorial:
- In accordance with the provisions of the treaty with the Quinaielt and Quillehute Indians, concluded July 1, 1855, and January 25, 1856 (Stats. at Large, vol. 12, p. 971), and to provide for other Indians in that locality, it is hereby ordered that the following tract of country in Washington Territory (which tract includes the reserve selected by W. W. Miller, superintendent of Indian affairs for Washington Territory, and surveyed by A. C. Smith, under contract of September 16, 1861) be withdrawn from sale and set apart for the use of the Quinaielt, Quillehute, Hoh, Quite, and other tribes of fish-eating Indians on the Pacific coast, viz: Commencing on the Pacific coast at the southwest corner of the present reservation, as established by Mr. Smith in his survey under contract with Superintendent Miller, dated September 16, 1861; thence due east, and with the line of said survey, 5 miles to the southeast corner of said reserve thus established; thence in a direct line to the most southerly end of Quinaielt Lake; thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Queetshee River and 3 miles above its mouth; thence with the course of said river to a point on the Pacific coast, at low-water mark, a half mile above the mouth of said river; thence southerly, at low-water mark, along the Pacific to the place of beginning.

Pursuant to the Quinault Indian Nation Constitution and applicable federal law, this Title asserts

hereby be adopted by reference and declared to be a part of this Title. The Flood Insurance Study will be on file at the Planning Department

Artificial wetland means wetlands created from non-wetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, and landscape amenities.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

Base Flood Elevation means the computed elevation to which floodwater is anticipated to rise during the base flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Beach means the land between the ordinary high tide line and extreme low tide line.

Building (v). means the act of assembling materials into a structure with walls and a roof.

Building (n). means a built or created walled and roofed structure.

Building Inspector means the person(s) authorized by the Quinault Indian Nation to perform the duties and responsibilities of a Building official or officer as defined by the accepted Quinault Indian Nation Building Code.

Business Committee means the governing body of the Quinault Nation as defined in Article IV of the Quinault Constitution.

Commercial (minor) means the provision of goods or services for compensation from a building with a gross floor area of not more than 1,800 square feet and less than four employees on the premises.

Commercial (major) means the provision of goods or services for compensation from a building with a gross floor area of more than 1,800 square feet and more than four employees on the premises.

Commission means the Quinault Planning Commission.

Construction and construction activities means any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity or use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any activity that alters a shore, beach, seacoast, river, stream, lake, pond, canal, marsh, dune area, woodlands,

wetland, endangered species habitat, aquifer or other resource area, including coastal construction or other activity.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations that produce, use or store hazardous materials or hazardous waste.

Department means the Quinault Planning Department.

Development means any human-caused material change in the use or appearance of any structure or in the land itself. Development includes: subdivision of land; construction of structures, roads, utilities, and other facilities; installation of septic systems; grading; deposit of refuse, debris, or fill materials; and clearing of natural vegetative cover (with the exception of agricultural activities), including within the area of special flood hazard. Routine repair and maintenance activities are exempted.

Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by natural or artificial means.

Dwelling and dwelling unit means a building or part of a building or structure containing living, sleeping, and sanitary facilities for occupancy.

Elder - see "Tribal Elder."

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

Floodplain Administrator is an individual employed by the Quinault Indian Nation who administers Section 48.08, Flood Hazard Reduction, of this Title.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Home-based business means the utilization of a residential dwelling, accessory building, and/or property, to provide a service, produce a product, sell merchandise, or otherwise engage in a lawful activity for the pursuit of remuneration; excluding the sale of the property and its improvements, garage sales, fireworks, and infrequent sale of personal merchandise consistent with use of the property solely as a residence.

Industrial means of, relating to, concerning, or arising from the assembling, fabrication, finishing, manufacturing, packaging, or processing of goods, or mineral extraction.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Title found in Section 48.08.

Manufactured Home means a structure that is manufactured in one or more sections at a location other than the site by assembly line-type production techniques or by other construction methods unique to an off-site manufacturing process and towed to the site on its own chassis or by any other alternative means. Every section shall bear a label certifying that it is built in compliance with the National Manufactured Home Construction and Safety Standards. For floodplain management purposes, the term "manufactured home" also includes recreational vehicles. For insurance purposes, the term "manufactured home" does not include recreational vehicles.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Marine Bluffs means coastal features that resulted from wave erosion undercutting uplands located contiguous to the shoreline, creating vertical cliffs that are an important source of sediment for coastal drift processes and/or the landforms created by these processes.

Mill means facility for manufacturing, including a saw mill and shake mill.

Mobile Home means a transportable structure suitable for year-round occupancy and having water, electrical, sewage connections and not less than 32 feet in length.

Motor Home means a self-contained portable structure with no exterior sewer, water or electrical connections, designed for occupancy and constructed as an integral part of a self-propelled vehicle used as a temporary dwelling for travel, recreational, and vacation uses.

Natural Resource Activities means any activity conducted on or directly pertaining to forest lands, tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater, wetlands, marshes and any other body of water, including but not limited to:

- (1) Road and trail construction
- (2) Harvesting, final and intermediate

- (3) Pre-commercial thinning
- (4) Reforestation
- (5) Fertilization
- (6) Prevention and suppression of disease and insect damage
- (7) Salvage of trees and down logs
- (8) Brush control
- (9) Gravel and mineral extraction
- (10) Any activity with the potential to effect tidelands, rivers, lakes, springs, streams, sloughs, ponds, groundwater, wetlands, marshes and any other body of water

Non-Conforming Use means the use of a building, structure or parcel of land that does not conform to the regulations of the zone in which it is located or a use which lawfully occupied a building or parcel of land at the time this Title became effective and which does not conform with the use regulations of the zone in which it is located.

Office means a room or group of rooms used for conducting the affairs of a business, profession, service industry, or government.

Open Space means land and/or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

Planned Unit Development means an area of land developed as a single unit for a number of buildings or a number of uses that allows concentration of buildings in a specific area on the site to allow the remaining area to be used for open space or preservation of Sensitive Areas.

Planning Commission means the Quinault Planning Commission.

Potable means water suitable for human consumption or human contact.

Principal Structure or Use means the single primary structure or use on a lot, as distinguished from accessory uses or structure.

Public Building means a structure principally of an institutional nature and serving a public need, such as churches, hospitals, schools, libraries, museums, post offices, police and fire stations, public utilities, and other public services, but not including the operation of a public bar, restaurant, or recreational facility as a commercial enterprise.

Recreational vehicle means a vehicle that is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) designed to be self-propelled or permanently towable by a light-duty truck; and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

Resource Extraction means the extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

Setback means the required distance between every structure and the lot lines of the lot on which it is located.

Single-Family means a single person or two or more persons related to each other by blood, marriage, or legal adoption living together as a single housekeeping unit; or a group of not more than five persons who need not be related by blood, marriage, or legal adoption, living together as a single housekeeping unit and occupying a single dwelling unit.

Site Plan means a detailed drawing, to scale, including but not limited to the location and relationship of the structures, streets, driveways, recreation areas, parking areas, utilities, landscape features, existing and proposed grading, walkways, lot lines and other site development information as related to a proposed development.

Spot-Zoning means a change in zoning of a lot or parcel to benefit an owner for a use incompatible with surrounding uses and not in furtherance of public interest or comprehensive plan.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

- (1) before the start of construction of improvement or repair, or
 - (2) if the structure has been damaged and is being restored, before the damage occurred.
- For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the

building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Temporary Use means a use for a fixed period of time, with the intent to discontinue such use upon the expiration of such time, which does not involve the construction or alteration of any permanent structure.

Travel Trailer means a self-contained portable structure with no exterior sewer, water or electrical connections, built on a chassis used as a temporary dwelling for travel, recreational, and vacation uses.

Tribal Elder means a person enrolled in a federally-recognized Indian Tribe who is fifty-five (55) years of age or older.

Wetland means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

48.03 Administration.

48.03.010 Quinault Planning Department.

There is established a Quinault Planning Department to administer this Title and the Quinault Comprehensive Plan. The Department includes employees and contractors of the Nation with expertise in land use, zoning, and building who work with and provide technical and administrative support to the Commission in administering and enforcing this Title. Among the duties of the Department related to administering this Title are: (a) determining the completeness of applications and adequacy of submissions for activities authorized by this Title; (b) reviewing applications submitted for activities authorized by this Title and recommending actions by the Commission; (c) submitting a proposed annual budget for the Department for consideration and approval by the Business Committee (d) conducting site visits to ensure compliance with the provisions of this Title; (e) keeping records of all applications and supporting documentation, and all decisions and permits issued; and (f) recommending regulations for adoption by the Planning Commission consistent with and to implement the provisions of this Title; (g) preparing an annual report to the General Council of Planning Department activities for approval by the Planning Commission, (h) enforcing the provisions of this Title and regulations adopted pursuant

to it in accordance with the provisions of this Title; and (i) taking whatever actions are necessary consistent with this Title.

48.03.020 Quinault Planning Commission.

- (a) There is hereby created a Planning Commission for the Quinault Indian Nation, which shall consist of up to five (5) voting members who shall be appointed by the Business Committee.
- (b) Members shall consist of a representative cross-section of people.
- (c) The members shall be selected without respect to political affiliation and shall serve without compensation except for approved expenses.
- (d) One member shall be a liaison to the Business Committee.

48.03.030 Term of Office and Voting.

- (a) Appointed members shall serve a period of three (3) years. Vacancies shall be filled by appointments for the remainder of unexpired terms only. Members may be reappointed by the Business Committee when their terms expire.
- (b) A quorum for a Planning Commission meeting shall be three (3) voting members.

48.03.040 Removal from Office.

Should any voting member of the Planning Commission have three (3) unexcused absences from regular, consecutive meetings, the Planning Commission may so inform Business Committee and request removal of this member and appointment of his/her successor.

48.03.050 Procedures; Meetings; Bylaws.

The Commission shall elect its own Chairperson Vice-Chairperson, and may elect other officers as it deems necessary. The Commission shall hold at least one (1) regular meeting each month. Meetings shall be open to the public. It shall adopt bylaws for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations.

48.03.060 Reports to Business Committee.

The Planning Commission shall report at least quarterly to the Quinault Tribal Business Committee, and annually to the Quinault General Council, at the regular Annual Meeting, concerning the activities and accomplishments of the Planning Commission.

48.03.70 Planning Commission Purpose, Powers.

- (a) The purpose of the Planning Commission shall be to oversee the land use aspects of this Title and the Comprehensive Plan as approved by the Business Committee. The Planning Commission shall make recommendations for changes in the Comprehensive Plan, as needed, including complete review every five (5) years. The Commission may make recommendations to the Business Committee for updating this Title, building codes, and proposed land-use projects.
- (b) Commission powers include:

- (1) Prepare a budget to be approved by the Business Committee for Planning Commission activities.
- (2) Review land use and development-related codes and recommend revisions to Business Committee.
- (3) Review Comprehensive Plan and recommend revisions to Business Committee.
- (4) Adopt regulations recommended by the Department consistent with and to implement the provisions of this Title.
- (5) Recommend a fee schedule to Business Committee for permits authorized by this Title.
- (6) Recommend updates to the Planning Commission Bylaws for approval by the Business Committee.
- (7) Recommend lot assignments/leases for approval by the Business Committee.
- (8) Work with Planning Department staff as budgeted by the Business Committee in carrying out its land-use responsibilities in this Title.

48.04 Zoning.

48.04.10 Official Zoning Map.

- (a) The Quinault Indian Reservation is hereby divided into zones as shown on the Official Zoning Map, which is adopted and declared to be a part of this Title. The Official Zoning Map shall be dated and shall include reference to its authorizing Business Committee Resolution.
- (b) The Official Zoning Map, which shall be located in the Quinault Planning Department office, shall be the final authority as to the current zoning status of the land uses allowed on the Reservation. If, in accordance with the provisions of this Title, changes are made in zone boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Business Committee. Planning Department staff shall be responsible for map updates, the originals of which are to be left in the Planning Department office.

48.04.020 Boundary Interpretation.

Where uncertainty exists as to boundaries of any zone on the Official Zoning Map, the following rules shall apply:

- (a) Zonal boundary lines are intended, and should be construed, to follow lot lines, center lines of streets and alleys, highways, and rights-of-way, the ordinary high water mark of lakes, ponds and water courses, and the ordinary high tide line.
- (b) Where zonal boundaries cross property that is not subdivided into lots, and other provisions herein are not applicable, the location of such boundary line shall be determined by use of the scale of the Official Zoning Map.
- (c) Where boundaries are depicted by topographic variation, the top of the slope as identified on the Official Zoning Map will be the division line, which may divide large single ownership parcels.

48.05 Zones.

48.05.010 Residential Zone (R)

- (a) In the Residential Zone, no uses and structures shall be permitted unless for residential purposes or accessory to a residential use, which includes mixed uses of civic and public uses and home-based businesses. For the purpose of this Title, schools, churches, cemeteries, public buildings and their land uses, apartment houses, and other multiple dwellings are classified as residential uses. Small shops with a maximum size of 1440 square feet are a conditional use in the Residential Zone, provided that, they do not constitute a nuisance to contiguous residential property. Home-based businesses are permissible uses in the Residential Zone, provided that they do not constitute a nuisance under applicable Quinault Tribal Code.
- (b) Only one (1) sign meant for viewing from outside the shop is permitted. Such a sign shall be located to conform to the setback requirements for buildings in the Residential Zone, shall not exceed three (3) square feet in size, and shall be in keeping with the residential character of the neighborhood. Signs may be permitted as a conditional use in the Residential Zone upon submission of a signage plan, which shall include a detailed description of the location, size, height, and content of the proposed sign.
- (c) Septic tanks shall not be used in areas with densities exceeding one (1) unit per acre and areas with soils inappropriate for septic systems. The purpose of this zone is to provide single family tracts of 7500 square feet minimum lot size when lots are served by community sewage systems and a rural type development with a minimum lot size of one (1) acre when lots are served by septic tank or other individual systems. All uses and setbacks shall conform to Table 1 and 48.06.020.
- (d) Planned Unit Developments may be permitted to allow a modification of the application of the setback and site development requirements of this Title to encourage flexibility in design and development of land that results in a more efficient and aesthetic use of land.

48.05.020 Commercial Zone (C)

The purpose of this zone is to provide an open commercial zone for commercial light industrial activities from gas stations and supermarkets to warehousing, home-based businesses, and light manufacturing. All uses and setbacks shall conform to Table 1 and 48.06.020. Permitted uses include, but are not limited to, home-based businesses, grocery stores, drug stores, self-service laundries, general retail and specialty shops, banks, offices, cafes, restaurants, motels, appropriate entertainment and recreation facilities, parks and boat launchings, public buildings, museums, post offices, and police and fire stations. Light auto repair, boat repair and construction, seafood processing and merchandising, arts and crafts and marinas are also classified as commercial activities. Home-based businesses are permissible uses in the Commercial Zone, provided that they do not constitute a nuisance under applicable Quinault Tribal Code. Signs shall not obstruct visibility of drivers or pedestrians and shall not project over or onto the public right-of-way. Maximum permitted size of signs is sixty (60) square feet. Exterior lighting shall be arranged so that it is deflected away from and does not cause glare or annoyance to contiguous property or passing street traffic.

48.05.030 Industrial Zone (I)

The purpose of the Industrial Zone is to provide an exclusive zone for industrial activities that have limited noxious emissions in fumes, particulate matter, waste water, noise or vibrations. Land uses particularly appropriate for this zone include, but are not limited to: light manufacturing involving shake mills, the assembly of small machined parts, research activities and warehousing. Other land uses permitted include log transfers, heavy equipment maintenance, saw mill and other timber product processing. Residential and commercial uses are excluded from this zone, but office facilities of all types are permitted. All uses and setbacks shall conform to Table 1 and 48.06.020.

48.05.040 Forestry Zone (F)

- (a) The purpose of the Forestry Zone is to allow forestry management and its related activities.
- (b) In the Forestry Zone, no uses and structures shall be permitted unless for forestry uses. For the purpose of this Title, owner's residences and residences of labor employed in the industry are classified as forestry uses and shall be permitted in the Forestry Zone. Saw and shake mills are conditional uses. All uses and setbacks shall conform with Table 1 and 48.06.020.

48.05.050 Forestry and Industrial Buffer Zone

- (a) Forestry and industrial uses may have significant impacts at some distance from the actual site where the use occurs. In order to control such impacts, buffer zones are hereby established along the zone boundaries inside of the Forestry and Industrial Zones. The minimum width of the buffer strips shall be 300 feet. Wider strips may be designated where terrain or other conditions increase the distance of potential impacts.
- (b) All forestry and industrial uses within the buffer strips are conditional uses. Permit applications must indicate any possible adverse impacts or permitted uses in the neighboring zones and what steps will be taken to minimize them. The Planning Commission will approve forestry and industrial uses in the buffer strips only when assured there will be no significant adverse impacts on permitted uses in other zones.

48.05.060 Wilderness Zone (W)

- (a) The purpose of the Wilderness Zone is to retain the natural environment. Individual residences are a conditional use in the Wilderness Zone. No individual residence shall be permitted without full compliance with applicable tribal standards and individual approval by the Quinault Business Committee. The Quinault Planning Commission shall establish standards for building in the Wilderness Zone. Selective logging, where conditions are appropriate, are conditional uses in the Wilderness Zone, provided that the aesthetic and wilderness values of the site can be maintained. The tribal Forestry Department shall make recommendations for each site concerning the appropriateness of the proposed operations and conditions to be imposed to ensure the wilderness values are maintained. The Quinault Planning Commission shall establish minimum standards for conditional use.
- (b) Individual campsites shall be a conditional use in the Wilderness Zone. No campsite shall be used for overnight camping until the requirements of the Sanitation Title have been met.

Any campsite upon which a fire is to be built shall have prior approval of the Forestry Division of the Quinault Department of Natural Resources and Economic Development. The Quinault Planning Commission shall establish minimum standards for this conditional use. No subdivision or plat shall be approved within the boundaries of the Wilderness Zone.

48.05.070 Special Temporary Retail

- (a) From June 17th of each year through and including July 10th of the same year, temporary retail uses, including fireworks stands, food and souvenir concessions shall be permitted uses in the Commercial and Forestry zones, and shall be permitted uses in the Residential Zone with the consent of all contiguous property owners subject to the following conditions. Persons wishing to establish a special temporary retail use shall apply to the Planning Department for a special temporary retail use permit. The application shall include the name of the vendor(s) and landowner(s) and shall be signed by each. The application shall also include a map showing the location of the temporary retail use and shall identify the products which will be sold. For uses in the Residential Zone, the application shall also include the written consent of all contiguous property owners to the proposed use.
- (b) The Planning Department shall review the application to determine whether the application is complete and whether or not the proposed use will cause a traffic or other safety hazard due to its location. If the application is incomplete or the Planning Department finds that the location of the proposed use will create a traffic or safety hazard the permit shall be denied. Persons denied a permit may appeal to the Business Committee which shall hear the appeal at its next regularly scheduled meeting.
- (c) The setback requirements of this Title are waived for these special temporary uses. The use shall be subject to all other provisions of tribal law including the Business License Title and regulations and tribal health requirements.
- (d) Table 1 of the zoning Title is amended to include special temporary retail as a permitted use subject to the provisions of 48.05.070 in the Forestry, Commercial and Residential zones.

48.05.080 Re-zoning.

Rezoning may be recommended by the Planning Commission to the Business Committee when a situation cannot be responded to by a variance or conditional use. A rezone shall not be considered for any parcel when such a rezone would constitute spot zoning.

The following procedures apply for re-zoning:

- (a) A person may apply for a re-zone by submitting a re-zone application describing the nature of the re-zone requested and the applicable filing fee.
- (b) The Planning Department will schedule a public hearing before the Planning Commission within sixty (60) days of receipt of a complete application and applicable fee. The tribal legal staff shall outline legal guidelines as requested by the Department or Planning Commission prior to the public hearing.
- (c) Notice of the nature, time and place of the hearing will be published in the *Nugquam* and posted prominently around the Reservation by the Planning Department at least ten (10) business days in advance of the hearing. Notice of the nature, time and place of the hearing

will be mailed certified, return receipt requested, or hand delivered by the Planning Department to owners, lessees, and holders of legal interests in contiguous lots and at least ten (10) business days in advance of the hearing.

- (d) Applicant or his/her representative must attend the hearing before the Planning Commission to present the re-zoning application and answer questions concerning the proposed re-zone.
- (e) Any persons may attend the hearing before the Planning Commission and provide any testimony relevant to the re-zoning application.
- (f) After closing the public hearing the Quinault Planning Commission may take action on the request or application or table it for further study or information and further hearing. The action or recommendation must be in the form of a motion and indicate whether it is to deny, approve, or approve with conditions. The motion must also include the findings that enabled the Quinault Planning Commission to reach the decision, and conclusions. The Quinault Planning Commission can adopt the recommended findings and conclusions prepared by staff or amend the recommended findings and conclusions.
- (g) The Planning Commission will make its final decision within ten (10) business days of the final hearing and will mail certified, return receipt requested, or hand deliver the final written order of the Planning Commission to the applicant within ten (10) business days of the final hearing.
- (h) Appeal of an unfavorable decision may be made by any person aggrieved by the final written order and must be made to the Business Committee within ten (10) business days of the applicant's receipt of the final written order. The decision of the Business Committee is final and not appealable.

ZONING DISTRICT USE - TABLE I

RESIDENTIAL ACTIVITIES

	RESIDENTIAL L	COMMERCIAL L	INDUSTRIAL L	FORESTRY Y	WILDERNESS S
Single Family Residential	P	P		P	C
Apartment, Townhouse, Multi-Family Dwellings	C	C			
Home Occupations	C	P		P	
Weekend Cabins					C
Mobile Home Parks	PD				
Nursing & Retirement Homes	C	P			

LEGEND:

P = PERMITTED USES
PD = PLANNED UNIT DEVELOPMENT
C = CONDITIONAL USE
A = ACCESSORY USE

COMMERCIAL ACTIVITIES (Table I - continued)

	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	FORESTRY	WILDERNESSES
	L	L	L	Y	S
Auto & Boat Parts Sales		P			
Auto & Boat Repair Garage		P	P		
Auto Service Station		P	P		
Bank & Lending Institutions		P			
Day Nurseries	P	P			
Drive-In Businesses		P			
Smoke Shop		P			
Drug Stores		P			
Florists		P			
Grocery Stores		P			
Hardware Stores		P			
Hotels & Motels		P			
Kennels, Commercial	A	P	P		
Marinas		P	P		
Medical Clinics	P	P	A		
Nursery, Landscaping & Floral		P	P		
Offices	PD	P	A		
Temporary Retail		P	P		
Special Temporary Retail	P	P	P	P	
Real Estate & Insurance		P			

Offices					
Restaurants	PD	P	A		
Taverns, General Retail		P			

INDUSTRIAL ACTIVITIES (Table I - continued)

	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	FORESTRY	WILDERNESS
Agricultural	P				
Industrial, Heavy (HI)			P		
Industrial, Light (LI)		P	P		
Mineral Extraction			P	C	
Timber Harvesting	A	A	A	P	C
Salvaging and Relogging				P	P
Warehousing		P	P		
Machinery Rental		P	P		
Shake & Saw Mills			P	C	

PUBLIC & SEMI-PUBLIC ACTIVITIES (Table I - continued)

	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	FORESTRY	WILDERNESS
	L	L	L	Y	S
Camping, Commercial & Public				C	C
Churches	P	P			
Commercial Recreation		P		C	
Golf Courses	C	P			
Hospitals, Clinics	P	P	A		
Parks, Recreational	P	P	P	P	P
Quasi- Public Bldg., Non-Profit	PD	P			
Schools	P				

Public Buildings	P	P	P		
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LEGEND:

- P = PERMITTED USES
- PD = PLANNED UNIT DEVELOPMENT
- C = CONDITIONAL USE
- A = ACCESSORY USE

OTHER ACTIVITIES (Table 1 - continued)

	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	FORESTRY	WILDERNESSES
Cemeteries	P				
Garages, Parking	A	P			
Horse Riding Stables					
Public Utility Installations	A	A			
Radio & TV Stations & Towers		P			
Sewage Treatment Plants					

LEGEND:

- P = PERMITTED USES
- PD = PLANNED UNIT DEVELOPMENT
- C = CONDITIONAL USE
- A = ACCESSORY USE

48.05.090 Sensitive Areas.

The following lands are designated as Sensitive Areas:

- (a) Areas with a critical recharging effect on aquifers used for potable water that are vulnerable to contamination that would affect the potability of the water.
- (b) Areas that because of their susceptibility to erosion, slides, or other geological events, are not suited to siting commercial, residential, or industrial development.
- (c) Habitat areas utilized by a federally-listed threatened or endangered species, and which, if altered, may harm the species.
- (d) Beaches, dunes, and marine bluffs.
- (e) Areas outside of Taholah, Queets and Amanda Park subject to coastal flooding hazards.

The Department shall not issue a permit for any project that may adversely affect the functions and values of any Sensitive Area unless the anticipated adverse effects are mitigated such that the functions and values of the sensitive area are preserved, restored or enhanced. The Department may require an applicant seeking a permit under the terms and provisions of this Title to undertake mitigation designed to preserve, restore or enhance ecological functions and processes, and functions and values of any Sensitive Area affected by the project for which the applicant seeks the permit.

If mitigation is required by the Department, the Department shall require the applicant to mitigate the effects of the project in the following order of preference:

- (a) Avoid the impacts altogether by not taking certain actions or parts of an action;
- (b) Minimize the impacts by limiting the scope of the project, in a manner acceptable to the Department, based on best available science and using appropriate technology or best management practices;
- (c) Repair, restore or enhance the affected Sensitive Areas to properly functioning conditions; or
- (d) Replace, restore or enhance substitute ecological values and functions of Sensitive Areas with equal or higher ecological values.
- (e) Make payment to the Sensitive Areas Protection and Restoration Fund

48.05.100 Fish Sensitive Area.

The applicant shall mitigate any impacts of the proposed development on fisheries resources pursuant to a mitigation plan acceptable to the Quinault Division of Natural Resources. An applicant for a project within three hundred (300) feet of the ordinary high water line a surface water body, including river, stream or wetland, or the top of a marine bluff shall submit a Fish Sensitive Areas Report that is acceptable to the Quinault Department of Natural Resources. The Fish Sensitive Areas Report shall be prepared by a fisheries biologist and shall contain each of the following:

- (a) A description of the proposed project;
- (b) A map of the project area and any and all Sensitive Areas and Fish Sensitive Areas within three hundred (300) feet of the project area;
- (c) A description of all species or habitat types for which the Fish Sensitive Area was designated;
- (d) An assessment of any impacts the project may have on the Fish Sensitive Area, species or habitat for which it was designated; and
- (e) A proposal for how to mitigate adverse impacts of the project on the Fish Sensitive Area.

The Quinault Division of Natural Resources shall require the applicant to mitigate the effects of the project in the following order of preference:

- (a) Avoid the impacts altogether by not taking certain actions or parts of an action;
- (b) Minimize the impacts by limiting the scope of the project, in a manner acceptable to the Department, based on best available science and using appropriate technology or best management practices;
- (c) Repair, restore or enhance the affected shorelines and sensitive areas to properly functioning conditions; or
- (d) Replace, restore or enhance substitute ecological values and functions of shorelines or sensitive areas with equal or higher ecological values.
- (e) Make payment to the Sensitive Areas Protection and Restoration Fund

48.06 Site Development Requirements.

48.06.010 Applicable Building Codes.

To the extent they are not inconsistent with the provisions of this Title or regulations adopted pursuant to this Title, the following Codes are adopted and incorporated by reference:

- (a) The International Building Code (IBC) (currently applicable version)
- (b) The International Plumbing Code (currently applicable version)
- (c) The International Mechanical Code (currently applicable version).
- (d) The International Fire Code (currently applicable version).
- (e) The National Electrical Code (currently applicable version).
- (f) The Manufactured Housing Construction and Safety Standards (currently applicable version).

In the case of conflict between requirements of these adopted building and other codes and this Title, this Title and any regulations adopted hereunder shall apply.

48.06.020 Addresses.

All buildings on the Reservation shall obtain a street address approved or assigned by the Department. Address numbers shall be displayed on the front of all buildings and shall be visible from the street they face.

48.06.030 Building Setbacks.

	Residential	Commercial		Industrial	Forestry	Wilderness
		<i>Minor</i>	<i>Major</i>			
Min. Lot Area	7,500 sq.ft.	7,500 sq.ft.	20,000 sq.ft.	5 acres	20 acres	N/A
Min. Lot Frontage	75 ft.	75	100 ft.	200 ft.	N/A	N/A
Max. Bldg Height From Mean Ground Line	30 ft.	35	35 ft.	35 ft.	N/A	N/A
Min. Principal Bldg. Setbacks						
Front	25 ft.	20	40 ft.	80 ft.	N/A	N/A
Side	10 ft.	10ft.	N/A	50 ft.	N/A	N/A
Rear	25 ft.	20ft.	N/A	50 ft.	N/A	N/A
Min. Accessory Bldg. Setbacks						
Front	25 ft.	N/A	N/A	N/A	N/A	N/A
Side	10 ft.	N/A	N/A	N/A	N/A	N/A
Rear	5 ft.	N/A	N/A	N/A	N/A	N/A
Max. Lot Coverage	40 %	40	60 %	40 %	N/A	N/A
Off-Street Parking Req.	2 per unit	2 per unit	1 per 200 gr.bld	1 per employee	N/A	N/A

48.06.040 Off-Street Parking.

- (a) All parking areas except single family residential shall be surfaced with a minimum of two (2) inches of asphalt or four (4) inches of concrete with parking stalls marked. Crushed rock surfacing may be used on a temporary basis (six (6) months). No part of any street, alley, public right-of-way or property with a different zone than the principal use shall be considered a part of any required off-street parking space.
- (b) No building permits for new construction or remodeling shall be issued for building other than single family residences until a parking plan has been approved by the Planning Commission.

48.06.050 Required Public Right-of-Way.

- (a) Minimum standards for new street right-of-way shall be: fifty (50) feet for collector streets, sixty (60) feet for secondary arterials, seventy (70) feet for primary arterials and one hundred fifty (150) feet for major highways. Said standards shall be decreased only upon recommendation of the Planning Commission and approval of the Business Committee.

- (b) Building setbacks shall be measured from the outside edge of right-of-way. No building permit shall be issued where the required right-of-way, as determined by this Title or modified by the Planning Commission, has not been deeded for public use. Existing buildings shall not be rendered non-conforming due to substandard setbacks or lot size when such substandard is the sole result of this Section.

48.06.060 Driveways

No driveway shall be located within thirty (30) feet of the intersection of the property line with any traffic intersection.

A single family residential home must have at least one (1) driveway access to the site. This driveway access cannot be shared with any contiguous property.

Shared driveways for any other proposed development must be indicated on the site plan and approved by the Commission.

48.06.070 Auto Service Station Requirements.

- (a) The leading edge of the pump island and/or pumps canopy shall be twenty (20) feet or more from any property line.
- (b) Permitted building area/floor area ratio shall be one-half the area allowed for other uses in the respective zone.
- (c) Gas stations in existence at the date of approval of this Title are exempt from the requirements in this section.

48.06.080 Performance Standards for Non-Agricultural Land-Use.

- (a) All emissions shall conform to or be more restrictive than the standards of the Olympic Air Pollution Control Authority and other applicable local and federal agencies.
- (b) Any odor or glaring light from normal operation detectable beyond the property boundary is prohibited and ground vibration shall be non-perceptible (without instruments) at any point off the property line except in industrial districts. These odor, light and ground vibration standards shall apply to the industrial district boundary instead of individual property lines.

48.06.090 Land Classified as Unbuildable.

- (a) Development of portions of properties having adverse physical and/or legal characteristics is not recommended or allowed by this Title. These characteristics include: 1) Land in excess of twenty-five (25) percent grade; 2) Land that is characterized by a high water table or other water problems, including being prone to flooding; 3) Bodies of water; 4) Portions of land committed to access easement including private and public road right-of-way; and, 5) Properties or portions of properties used by special easements or agreement when such agreements extend for the anticipated lifetime of the proposed development.
- (b) No land use shall be allowed that would constitute a hazard to human life, safety, health, or public welfare due to fire risk, sanitation or other cause.

48.06.100 Planned Unit Development Standards and Criteria.

- (a) The purpose of this Section is to provide the opportunity for substitution or alteration of the provisions of this Title when the Quinault Tribe is assured of:
 - (1) A high quality of development, functionally and aesthetically.
 - (2) Compatibility with surrounding land uses, both existing and proposed.
 - (3) The availability of adequate public facilities to serve the development.
- (b) The application may be processed in conjunction with a rezone on the same property.
- (c) Density increases shall be allowed for the use(s) permitted outright in the underlying zoning districts.
- (d) All other uses may be developed to the density allowed in the zone where the use is a permitted use.
- (e) The following information or documents are required for submission with the request:
 - (1) A scale drawing of the property.
 - (2) A map showing details of development/pre- and post-project.
 - (3) 5 foot contours/pre- and post-project geographic features.
 - (4) Public rights-of-way and gradients (information and graphic requirements for pre-application review and application may be obtained at the tribal planning office).
 - (5) Utility lines and easements.
 - (6) Sewage disposal methods.
 - (7) Solid waste disposal methods.
 - (8) An analysis of arterial and collector access and egress.
 - (9) A detailed landscape plan.
 - (10) A description of project phasing.
 - (11) A copy of covenants and restrictions to run with the property, if any.
 - (12) A list of deviations from standards of this Title, as well as a detailed explanation of how the intent of the standards will be achieved by special design features.
 - (13) All drawings shall be certified and/or prepared by an architect or licensed engineer.
 - (14) Proof of fire and police protection.

48.06.110 Planned Unit Development Procedure.

The following procedures apply for development of a Planned Unit Development:

- (a) A person may apply for a Planned Unit Development by submitting an application describing the nature of the Planned Unit Development requested and the applicable filing fee.
- (b) The Planning Department will schedule a public hearing before the Planning Commission within sixty (60) days of receipt of a complete application and applicable fee. The tribal legal

staff shall outline legal guidelines as requested by the Department or Planning Commission prior to the public hearing.

- (c) Notice of the nature, time and place of the hearing will be published in the *Nugquam* and posted prominently around the Reservation by the Planning Department at least ten (10) business days in advance of the hearing. Notice of the nature, time and place of the hearing will be mailed certified, return receipt requested, or hand delivered by the Planning Department to owners, lessees, and holders of legal interests in contiguous lots and at least ten (10) business days in advance of the hearing.
- (d) Applicant or his/her representative must attend the hearing before the Planning Commission to present the Planned Unit Development application and answer questions concerning the proposed Planned Unit Development.
- (e) Any persons may attend the hearing before the Planning Commission and provide any testimony relevant to the application.
- (f) After closing the public hearing the Quinault Planning Commission may take action on the request or application or table it for further study or information and further hearing. The action or recommendation must be in the form of a motion and indicate whether it is to deny, approve, or approve with conditions. The motion must also include the findings that enabled the Quinault Planning Commission to reach the decision, and conclusions. The Quinault Planning Commission can adopt the recommended findings and conclusions prepared by staff or amend the recommended findings and conclusions.
- (g) The Planning Commission will make its final decision within ten (10) business days of the final hearing and will mail certified, return receipt requested, or hand deliver the final written order of the Planning Commission to the applicant within ten (10) business days of the final hearing.
- (h) Appeal of an unfavorable decision may be made by any person aggrieved by the final written order and must be made to the Business Committee within ten (10) business days of the applicant's receipt of the final written order. The decision of the Business Committee is final and not appealable.

All Planned Unit Developments shall be initiated within six (6) months and completed within three (3) years of receipt of final approval of the project, unless the completion date is extended by the Planning Commission.

48.06.120 Subdivision Requirements.

The purpose of the subdivision requirements is to further the Comprehensive Plan; protect the public health, safety and general welfare; to secure an appropriate allotment of land in new developments for the requirements of community life; to conserve and restore natural beauty and other natural resources; and, to facilitate the adequate provision of transportation, water, sewage, and other public facilities.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas or propane, electrical, and water systems located and constructed to minimize flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,

- (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments that contain at least fifty (50) lots or five (5) acres (whichever is less).

These requirements shall apply to all subdivisions as defined by this Title or other divisions of land for the purpose of sale or building development, whether immediate or future. The regulations shall apply in every situation where there is a dedication of streets, alleys, easements, right-of-way, servitudes, restrictive covenants or land for public uses.

Any map, plat, replat or plan hereafter made of any subdivision or any part thereof within the Quinault Reservation shall be presented for approval and be recorded as prescribed. Such description shall not use metes and bounds. Until approved by the Business Committee and filed, these maps or plats have no validity.

48.06.130 Preliminary Plat Application for Approval.

- (a) For the purpose of expediting the final approval of any plat, the subdivider shall make application for approval of a preliminary plat to the Planning Commission, at the tribal office of the land use planner, in accordance with criteria provided by the planning staff. The subdivider shall submit ten (10) copies of the preliminary plat
- (b) Upon receiving an application for preliminary plat approval, the planning staff shall set the date of a public hearing.

48.06.140 Preliminary Plat Requirements.

The scale of the preliminary plat shall be not less than fifty (50) feet or more than two hundred (200) feet to the inch and shall contain information specified below. The preliminary plat shall be certified by a licensed surveyor.

The preliminary plat shall show the following features and information:

- (a) The name of the proposed plat, subdivision or dedication.
- (b) A legal description of all lands included in the proposed plat, subdivision, or dedication, together with a current title report showing clear title in the developer.
- (c) The preliminary plat map and the map or maps of existing conditions shall be approved and stamped by a registered engineer or licensed surveyor.
- (d) Existing monuments and markers.
- (e) The boundary lines of the tract to be subdivided.
- (f) Location, width and names of all existing or platted streets or other public ways within the proposed development and other important features, including but not limited to, the general outline of permanent buildings, water courses, power lines, telephone lines, railroad lines, municipal boundaries, township lines and section lines.
- (g) The general location and size of existing sewers, water mains, culverts, and other underground installations within the tract and immediately contiguous thereto, as far as can be determined.
- (h) Contours of sufficient interval to show the topography of the entire tract, unless specifically

- waived by the planning staff.
- (i) The layout of proposed street right-of-way lines, alley and easement lines, and approximate dimensions of lots and blocks.
 - (j) Tentative grades of each street.
 - (k) All the parcels of land intended to be dedicated or temporarily reserved for public use or to be reserved in the deed for the common use of the property owners in the subdivision. The purpose, conditions or limitations of such dedications or reservations shall be clearly indicated.
 - (l) The indication of any portion or portions of the plat for which successive or separate final plats are to be filed.
 - (m) A vicinity sketch indicating the boundary lines and names and addresses of owners of record or property within three hundred (300) feet of contiguous subdivisions, streets and tract lines of contiguous parcels, and the relationship of the proposed plat to major highways, schools, parks, shopping centers, and similar facilities.
 - (n) Two copies of the proposed restrictive covenants.

48.06.150 Preliminary Plat Approval.

The Commission shall consider the preliminary plat within sixty (60) days. If the Commission finds that the preliminary plat is in a location that is reasonably safe from flooding, makes appropriate provision for streets, parks, sites for schools and other facilities, in furtherance of the Comprehensive Plan, and that the public interest will be served, the Planning Commission may approve the preliminary plat outright or conditionally, and submit their recommendations to the Business Committee which shall act in sixty (60) days. Where approval is denied, such notice shall set forth the reasons for denial. The approval of a preliminary plat shall not guarantee final approval of the plat or subdivision nor constitute an acceptance of the subdivision. Approval shall be authorization to proceed with the preparation of the final plat along the lines indicated in the approval of the preliminary plat.

48.06.160 Final Plat Approval.

The final plat procedure and requirements shall be the same as the preliminary plat procedure with the following additions:

- (a) For purpose of filing the final plat, the subdivider shall submit to the land use planner an original final plat tracing and six (6) dark line prints thereof. Each subdivision shall be accompanied by a certificate of title, dated not to exceed thirty (30) days prior to submitting a plat for final approval, showing the names of all persons, firms or corporations whose consent is necessary to dedicate road, street and other easements shown upon said map. The planner shall examine the plat for compliance with the provisions of this Title. If the final plat is deemed to be in correct form and to contain the required information, two (2) copies of the plat drawing shall be certified by the land use planner.
- (b) At the time the subdivider presents the final map to the land use planner, there shall be presented certificates executed respectively by the public utility companies certifying that satisfactory provisions have been made with each of said public utility companies as to location of their facilities and that easements, where required by such companies, have been

provided. Easements for public utilities shall be clearly designated on the final map. Dedications of all streets, highways and parcels of land shown on the final map and intended for any public use shall be offered for dedication by the Quinault Nation for public use.

The minimum improvements which the subdivider will be required to make or enter into an agreement to make prior to the acceptance and approval of the final plat shall be:

- (1) Adequate grading and surfacing of streets, highways, ways, and alleys, as per minimum standards established by the Planning Commission.
- (2) Adequate drainage of the subdivision streets, highways, ways and alleys.
- (3) Monuments (minimum of three (3) feet from pipe) approved by the land use planner.
- (4) Other improvements may be required under circumstances cited in the Planning Commission action.
- (5) All improvements shall be installed to approved grades.
- (6) Plans, profiles and specifications of proposed improvements shall be furnished at the time of submitting a plat for final approval. Submission shall be to the Planning Commission.

Construction shall conform to tribal standards.

48.06.170 Existing Plats.

- (a) Every existing purported plat or subdivision which would be subject to the provisions of this Title if said plat or subdivision were proposed after the date of enactment of this Title is hereby declared to be an illegal, void, invalid and unapproved plat or subdivision, provided that, the Plat of the Indian Village of Taholah and the Plat of the Indian Village of Queets, as on record with the Portland Area Office or the Everett Indian Agency of the Bureau of Indian Affairs shall not be subject to this decision.
- (b) All existing plats or subdivisions subject to this Title and subject to paragraph (a) hereof shall be submitted for preliminary plat approval under this Title. Any plat or subdivision which shall fail to receive preliminary plat approval within one hundred and twenty (120) days of the enactment of this Title shall become an illegal, void, invalid, and unapproved plat or subdivision.
- (c) All existing plats or subdivisions subject to this Title and subject to paragraph (a) hereof shall be submitted for final plat approval within one hundred and eighty (180) days of the date of enactment of this Title. Any plat or subdivision which shall fail to receive final plat approval within two hundred and forty (240) days of the enactment of this Title shall become an illegal, void, invalid, and unapproved plat or subdivision.
- (d) Special rule for plats submitted after the effective date of this Title: Except as provided in paragraphs (b) and (c) herein, no proposed plat or subdivision which shall be submitted for approval after the effective date of this Title shall be approved if any part of said proposed plat or subdivision shall be within the boundaries of the Wilderness Zone as established herein.

48.07 Permit and Application Process.

All proposed development, as defined in this Title, within the exterior boundaries of the Reservation requires submittal of a Master Land Use Application, a Stormwater Management Plan, and a pre-application conference with the Land Use Planner and other Nation staff as the Director or Director's designee deems necessary, to discuss the Master Land Use Application and required permits. No applications shall be approved under this Title unless the applicant demonstrates compliance with all Quinault Tribal Codes and regulations adopted thereunder.

48.07.010 Building Permits.

Building Permits must be obtained from the Department for all construction activities, including new stick-built structures, manufactured, modular, and mobile homes, whether for permanent or temporary use; repairs or additions of any size; demolition of buildings or structures; fences, decks, and signs. The Building Inspector or Director or Director's designee may issue a Building Permit upon review of a complete application and supporting materials, and the applicant provides evidence of a safe and reliable supply of potable water for the intended use of the structure, and evidence of the compliance with the wastewater disposal requirements in Title 60.

The Floodplain Administrator or Director or Director's designee will determine the proposed development, including placement of a manufactured home, will be reasonably safe from flooding, and whether a variance under Section 48.08 of this Title is warranted. When base flood elevation data is not available, the Building Inspector, Director or Director's designee shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, and other sources such as from High Water Marks of Record for flood-prone areas. When base flood elevation data or High Water Marks of Record are provided, obtain and record the actual elevation of the lowest floor of all structures; and if applicable, elevation to which any non-residential structure has been flood-proofed.

Each application for a building permit shall be accompanied by:

- (a) applicable fees;
- (b) stamped, engineered building plans drawn to scale;
- (c) a site plan drawn to scale showing the dimensions of the lot to be built upon, the size and location of the building(s), structure(s), and/or accessory building(s)/structure(s) to be erected;
- (d) legal description, including lot boundaries;
- (e) name(s) of owners and/or persons with any legal interest in the lot;
- (f) proof of land ownership or legal use;
- (g) other applicable Quinault permits or licenses (business license for contractor(s), natural resources application approved, burn permit, etc.);
- (h) demonstration of lawful access to lot; and
- (i) such additional information as required by the Director or Director's designee.

No permit shall be issued unless there is demonstration by the applicant of compliance with all Quinault Nation Titles and regulations.

48.07.020 Travel Trailer and Motor Home Permits.

Travel Trailers and Motor Homes may be occupied in any area for a designated period not to exceed sixty (60) continuous days. A Permit to locate and occupy a Travel Trailer or Motor Home must be obtained prior to occupancy of the Travel Trailer or Motor Home for more than twenty-four (24) hours. Such Permit may be renewed once for an additional sixty (60) continuous days but in no event shall such use or occupancy be allowed for more than one hundred twenty (120) days in any twelve- (12-) month period. The Building Inspector or the Director or Director's designee may issue a Travel Trailer or Motor Home Permit upon review of a complete application and application fee.

An unoccupied Travel Trailer and/or Motor Home may be stored on any owned or leased property, without a permit, provided that such Travel Trailer or Motor Home is not the principal or only structure on the property and that the principal structure complies with all applicable Quinault Indian Nation land use and building laws and regulation.

48.07.030 Stormwater Management.

- (a) No application for development will be approved unless it includes a stormwater management plan detailing how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by a licensed engineer and must include the following information and any other information deemed necessary by the Department:
- (1) Background information and computations for sizing drainage facilities:
 - (i.) A topographical map or maps, on a scale of one (1) inch equals fifty (50) feet with five foot contours, which depicts the following information:
 - (A) All natural drainage channels and patterns within or adjacent to the development and other existing drainage features and drainage easements.
 - (B) The point(s) where the drainage from upstream properties currently enter(s) the property.
 - (C) The point(s) where drainage is discharged downstream from the property and the receiving waters (the receiving waters need not be indicated on a map, but may be noted in writing).
 - (D) The proposed development of the area and the estimated impervious surfaces.
 - (ii.) The measured area of the site (indicating both square footage and acreage), the estimated density, the estimated measured area of the site (indicating both square footage and acreage) proposed for coverage by impervious surfaces given the proposed level of development.
 - (iii.) An estimate of the peak discharge and amount of surface water entering and leaving the subject property in its uncleared natural state as a result of the twenty-five (25) year storm of twenty four (24) hours duration (the design storm).
 - (iv.) An estimate of the peak discharge and the amount of runoff entering and within the subject property that will be generated by the design storm given the proposed level of development.)
 - (v.) Proposed improvements for handling the computed drainage runoff.

- (vi.) A brief description of the system's specifications and the proposed receiving waters.
 - (vii.) Arrangements by the permittee to provide for continuing maintenance of the drainage facilities.
- (b) General Requirements.
- (1) Surface water, both existing and potential, entering the subject property shall be received at the naturally occurring location and surface water existing on or flowing through the subject property shall be discharged at the natural location with adequate energy dissipators within the subject property to minimize downstream damage and with no diversion at any of these points.
 - (2) The peak discharge and peak runoff volume (from both surface and subsurface sources) for the subject property resulting from the design storm shall not be increased above the levels generated on the property in its uncleared, natural state due to the proposed development.
 - (3) Retention/detention facilities shall be provided in order to handle all surface water in excess of the peak discharge of the property in its uncleared, natural state resulting from the design storm. The facilities shall be designed to prevent aggravation of any potential downstream peaking conditions.
 - (4) Lots shall be laid out so as to provide positive drainage away from all buildings.
 - (5) When a closed system is used to handle discharge within the tract, all structures will be a minimum of ten (10) feet from the closed systems.
 - (6) Storm water facilities shall be designed and built in such a manner that the outlet structures are easily accessible for inspection, testing, and long-term maintenance.

48.07.040 Non-Conforming Use.

If a lawful use of land or structure that exists at the effective date or amendment of this Title could not occur or be built under the requirements of this Title, it is considered a non-conforming use. It is the intent of this Title to permit these non-conformities and may remain as long as it is otherwise lawful subject to the following:

- (a) A non-conforming use shall not be enlarged, extended, reconstructed, moved, or altered in any way to increase its non-conformity.
- (b) A non-conforming use shall be deemed abandoned if it is discontinued or abandoned for a continuous period of six (6) months and shall not be reconstructed except in conformity with the requirements of this Title.
- (c) If any non-conforming use is destroyed by any means it shall not be reconstructed except in conformity with the requirements of this Title.

48.08 Flood Hazard Reduction.

48.08.010 Purpose.

It is the purpose of this section to promote the public health, safety, and general areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains or propane tanks, electric, telephone and sewer lines, streets, and bridges located in flood-prone areas;
- (6) To ensure that potential buyers and lessors are notified that property is in a flood-prone area; and,
- (7) To ensure that those who occupy the flood-prone area assume responsibility for their actions.
- (8) To protect Tribal resources.

48.08.020 Administration.

This Section 48.08, Flood Hazard Reduction, is administered by the Quinault Indian Nation's Floodplain Administrator, or the Director or Director's designee.

48.08.030 General Standards.

In all flood-prone areas, the following general standards apply:

- (a) Anchoring
 - (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - (2) All manufactured homes shall be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage per the latest accepted Quinault Indian Nation Building Codes.
- (b) Construction Materials and Methods
 - (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
 - (3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (c) Utilities
 - (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - (2) Water wells shall be located on high ground
 - (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters and according to the Nation's Title 60 and regulations promulgated thereunder; and,

- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

48.08.040 Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided or in flood-prone areas, the following specific provisions apply:

(a) Residential Construction

- (1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the High Water Mark of Record (or base flood elevation, if determined).
- (2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters, and be used solely for parking of vehicles, building access or storage in an area other than a basement. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (i.) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - (ii.) The bottom of all openings shall be no higher than one foot above grade;
 - (iii.) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and,
 - (iv.) FEMA's Technical Bulletin 11-01 provides additional required standards for crawlspace construction.

(b) Nonresidential Construction

- (1) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the High Water Mark of Record (or base flood elevation, if determined); or, together with attendant utility and sanitary facilities, shall:
 - (i.) be flood-proofed so that below the High Water Mark of Record (base flood level, if determined) the structure is watertight with walls substantially impermeable to the passage of water;
 - (ii.) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
 - (iii.) be certified by a licensed professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Department.
- (2) Nonresidential structures that are elevated, not flood-proofed, must meet the same standards as for residential structures for space below the lowest floor.
- (3) Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g. a building flood-proofed to the base flood level, if determined, will be rated one foot below that level).

(c) **Manufactured Homes**

- (1) All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the High Water Mark of Record (or base flood elevation, if determined) and be securely anchored to an adequately anchored foundation system.

(d) **Recreational Vehicles**

- (1) Recreational vehicles must:
 - (i.) Be on the site for fewer than one hundred eighty (180) consecutive days,
 - (ii.) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (iii.) Meet the requirements of this section and the elevation and anchoring requirements for manufactured homes.

(e) **Critical Facility**

- (1) Construction of new critical facilities shall be, to the extent possible, located outside the limits of the flood-prone area [or a Special Flood Hazard Area (SFHA) (100-year floodplain), if determined]. Construction of new critical facilities shall be permissible within the flood-prone area (SFHA) if no feasible alternative site is available. Critical facilities constructed within the flood-prone area (SFHA) shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

48.08.50 Variances to Flood Hazard Standards.

(a) **Conditions for Variances**

- (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
- (2) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination by the Floodplain Administrator or Director or Director's designee that the variance is the minimum necessary, considering the flood hazard, to accomplish the hazard reduction.
- (4) Variances shall only be issued upon:
 - (i.) A showing of good and sufficient cause;
 - (ii.) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (5) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public.

- (6) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry flood-proofing, where it can be determined that such action will have low damage potential and otherwise complies with Section 48.08.020 General Standards.
 - (7) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (b) In approving a request for variance and requiring any conditions to the variance approved, the Director or Director's designee shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Title, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas or propane, electrical, and water systems, and streets and bridges.

48.09 Permit Exceptions.

48.09.010 Variance.

A variance is a departure from the provisions of this Title for special circumstances related to a specific lot, when strict application of this Title would cause an undue or unnecessary hardship, or would otherwise be unreasonable or impractical. There will be no variances allowed for development in areas that are prone to flooding except as provided in Section 48.08.

The Planning Commission may grant a variance and may impose any conditions on said variance, if it determines each of the following criteria are met:

- (a) The proposed variance will not amount to a rezone of the boundaries shown on the Official Zoning Map and does not allow a use that is prohibited in the zone in which the subject property is located.
- (b) Special conditions and circumstances exist that are peculiar to the land, such as size, shape,

or topography of a parcel, or location of a legal structure on a parcel, not applicable to other lands in the same zone, and that literal interpretation of the provisions of this Title would deprive the property owner of uses commonly enjoyed by other properties with conforming uses in the vicinity and in the same zone.

- (c) The special conditions and circumstances do not result from the actions of the applicant.
- (d) Granting a variance requested will not alter the essential character of the locality or confer a benefit to the subject property that is denied other parcels in the same zone.
- (e) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

The following procedures apply for variances:

- (a) A person may apply for a variance by submitting a variance application describing the nature of the variance requested and how the criteria herein will be met, and the applicable filing fee.
- (b) The Planning Department will schedule a public hearing before the Planning Commission within sixty (60) days of receipt of a complete application and applicable fee. The tribal legal staff shall outline legal guidelines as requested by the Department or Planning Commission prior to the public hearing.
- (c) Notice of the nature, time and place of the hearing will be published in the *Nugquam* and posted prominently around the Reservation by the Planning Department at least ten (10) business days in advance of the hearing. Notice of the nature, time and place of the hearing will be mailed certified, return receipt requested, or hand delivered by the Planning Department to owners, lessees, and holders of legal interests in contiguous lots and at least ten (10) business days in advance of the hearing.
- (d) Applicant or his/her representative must attend the hearing before the Planning Commission to present the variance application and answer questions concerning the proposed variance.
- (e) Any persons may attend the hearing before the Planning Commission and provide any testimony relevant to the application.
- (f) After closing the public hearing the Quinault Planning Commission may take action on the request or application or table it for further study or information and further hearing. The action or recommendation must be in the form of a motion and indicate whether it is to deny, approve, or approve with conditions. The motion must also include the findings that enabled the Quinault Planning Commission to reach the decision, and conclusions. The Quinault Planning Commission can adopt the recommended findings and conclusions prepared by staff or amend the recommended findings and conclusions.
- (g) The Planning Commission will make its final decision within ten (10) business days of the final hearing and will mail certified, return receipt requested, or hand deliver the final written order of the Planning Commission to the applicant within ten (10) business days of the final hearing.
- (h) Appeal of an unfavorable decision may be made by any person aggrieved by the final written order and must be made to the Business Committee within ten (10) business days of the applicant's receipt of the final written order. The decision of the Business Committee is final and not appealable.

A variance granted under this Title is effective when exercised within six (6) months from the effective date of the grant by the Planning Commission, unless a longer period is specified by the Commission. In such case a variance is not exercised, it shall become void.

48.09.020 Conditional Use.

A conditional use is a use identified in this Title that needs case-by-case consideration because it may be incompatible with the principal permitted uses in the various zones. The Conditional Use Permit application shall accompany the application for a Building Permit. Only those uses contained in "Table I" will be considered, and only for the zone indicated.

The Planning Commission may grant a Conditional Use Permit, and may impose any conditions on said Permit, if it determines each of the following criteria are met:

- (a) The use shall not endanger the public health or safety if located where proposed, and the use will not allow conditions that will tend to generate nuisance conditions such as noise, dust, glare, vibration, (construction noise, dust and vibration excepted).
- (b) The use meets all requirements of this Title and regulations adopted pursuant to this Title where it is proposed to be located.
- (c) The use shall not be injurious or detrimental to contiguous property, unless the use is a public necessity, in which case specific steps shall be taken to lessen the detrimental impacts.
- (d) Multi-family dwellings shall only be permitted if the following provisions and conditions are met:
 - (1) Off-street parking to be provided in the amount of two (2) off-street parking spaces per dwelling unit.
 - (2) Setbacks shall conform to the requirements of the underlying zone.
 - (3) Accessory buildings shall comply with the setback requirements of the main building.

The following procedures apply for a Conditional Use Permit:

- (a) A person may apply for a Conditional Use Permit by submitting a Conditional Use Permit application describing the nature of the Conditional Use requested and how the criteria herein will be met, and the applicable filing fee.
- (b) The Planning Department will schedule a public hearing before the Planning Commission within sixty (60) days of receipt of a complete application and applicable fee. The tribal legal staff shall outline legal guidelines as requested by the Department or Planning Commission prior to the public hearing.
- (c) Notice of the nature, time and place of the hearing will be published in the *Nugquam* and posted prominently around the Reservation by the Planning Department at least ten (10) business days in advance of the hearing. Notice of the nature, time and place of the hearing will be mailed certified, return receipt requested, or hand delivered by the Planning Department to owners, lessees, and holders of legal interests in contiguous lots and at least ten (10) business days in advance of the hearing.

- (d) Applicant or his/her representative must attend the hearing before the Planning Commission to present the Conditional Use Permit application and answer questions concerning the proposed Conditional Use.
- (e) Any persons may attend the hearing before the Planning Commission and provide any testimony relevant to the application.
- (f) After closing the public hearing the Quinault Planning Commission may take action on the request or application or table it for further study or information and further hearing. The action or recommendation must be in the form of a motion and indicate whether it is to deny, approve, or approve with conditions. The motion must also include the findings that enabled the Quinault Planning Commission to reach the decision, and conclusions. The Quinault Planning Commission can adopt the recommended findings and conclusions prepared by staff or amend the recommended findings and conclusions.
- (g) The Planning Commission will make its final decision within ten (10) business days of the final hearing and will mail certified, return receipt requested, or hand deliver the final written order of the Planning Commission to the applicant within ten (10) business days of the final hearing.
- (h) Appeal of an unfavorable decision may be made by any person aggrieved by the final written order and must be made to the Business Committee within ten (10) business days of the applicant's receipt of the final written order. The decision of the Business Committee is final and not appealable.

A Conditional Use Permit granted under this Title is effective when exercised within six (6) months from the effective date of the grant by the Planning Commission, unless a longer period is specified by the Commission. In such case a Conditional Use Permit is not exercised, it shall become void.

48.09.030 Special Use Permits

A Special Use is a land use that would otherwise not be allowed under this Title. The Planning Commission may grant a Special Use Permit on a case-by-case basis, and may impose any conditions on said Permit, if it determines each of the following criteria are met:

- (a) There are special circumstances or conditions affecting the land, building, or use referred to in an application that do not qualify for a variance or conditional use permit;
- (b) Granting a Special Use Permit will not be materially detrimental to the public welfare, or injurious to the property or persons living contiguous to or in the vicinity of the property to which an application pertains;
- (c) Granting a Special Use Permit will maintain the spirit and intent of this Title, is consistent with the Nation's traditional uses and culture, will not impede the normal and orderly development and improvement of the surrounding property for uses allowed under this Title, and will not impair the protection of natural and cultural resources.

The following procedures apply for a Special Use Permit:

- (a) A person may apply for a Special Use Permit by submitting a Special Use Permit application describing the nature of the Special Use requested and the applicable filing fee.

- (b) The Planning Department will schedule a public hearing before the Planning Commission within sixty (60) days of receipt of a complete application and applicable fee. The tribal legal staff shall outline legal guidelines as requested by the Department or Planning Commission prior to the public hearing.
- (c) Notice of the nature, time and place of the hearing will be published in the *Nugquam* and posted prominently around the Reservation by the Planning Department at least ten (10) business days in advance of the hearing. Notice of the nature, time and place of the hearing will be mailed certified, return receipt requested, or hand delivered by the Planning Department to owners, lessees, and holders of legal interests in contiguous lots and at least ten (10) business days in advance of the hearing.
- (d) Applicant or his/her representative must attend the hearing before the Planning Commission to present the Special Use Permit application and answer questions concerning the proposed Special Use.
- (e) Any persons may attend the hearing before the Planning Commission and provide any testimony relevant to the application.
- (f) After closing the public hearing the Quinault Planning Commission may take action on the request or application or table it for further study or information and further hearing. The action or recommendation must be in the form of a motion and indicate whether it is to deny, approve, or approve with conditions. The motion must also include the findings that enabled the Quinault Planning Commission to reach the decision, and conclusions. The Quinault Planning Commission can adopt the recommended findings and conclusions prepared by staff or amend the recommended findings and conclusions.
- (g) The Planning Commission will make its final decision within ten (10) business days of the final hearing and will mail certified, return receipt requested, or hand deliver the final written order of the Planning Commission to the applicant within ten (10) business days of the final hearing.
- (h) Appeal of an unfavorable decision may be made by any person aggrieved by the final written order and must be made to the Quinault Business Committee within ten (10) business days of the applicant's receipt of the final written order. The decision of the Business Committee is final and not appealable.

A Special Use Permit granted under this Title is effective when exercised within six (6) months from the effective date of the grant by the Planning Commission, unless a longer period is specified by the Commission. In such case a Special Use Permit is not exercised, it shall become void.

48.09.040 Permit Fees.

Permit fees shall be established by the Quinault Business Committee upon recommendation of the Quinault Planning Commission. Tribal elders shall be entitled to waiver of all fees authorized under this Title upon providing verifiable proof of age.

48.10 Enforcement

48.10.010 General Authority to Enforce.

It shall be the duty of the Department to enforce the provisions of this Title. Failure to enforce this Title does not authorize or waive any violation of any provision of this Title or any regulation adopted pursuant to this Title. The Department may call upon law enforcement, fire, health, or other appropriate Quinault departments to assist in enforcement.

48.10.020 Right of Entry.

Employees, contractors and agents of the Nation may enter any Reservation lands at reasonable times and in a reasonable manner to inspect them for compliance with this Title and regulations adopted pursuant to this Title. Inspections of buildings on the Reservation shall be made at mutually convenient times for Department staff and the permittee. Application for any land use permit or any other land use activities constitutes consent to on-site inspection of permittee's property for the purpose of assessing compliance with this Title and regulations adopted pursuant to this Title.

48.10.030 Notice of Voluntary Correction.

Whenever the Director or Director's designee has reason to believe that a violation of this Title or regulations adopted pursuant to this Title has occurred, the Director or Director's designee may serve a written Notice of Voluntary Correction on the violator in the manner directed in this Section. In the event that the violator does not take corrective action as outlined in the Notice of Voluntary Correction, the Director or Director's designee shall issue a Notice of Violation.

48.10.040 Contents of Notice of Voluntary Correction.

The Notice of Voluntary Correction shall contain a brief and concise description of the alleged violation and the provision of this Title or regulations adopted pursuant to this Title alleged to have been violated. The Notice of Voluntary Correction shall state that continued or subsequent violation may result in further civil enforcement actions, as provided in this Title, to include monetary civil penalties. The Notice of Voluntary Correction shall contain a statement of the corrective action required and shall specify a reasonable date and time within which the corrective action must be accomplished.

48.10.050 Service of Notice of Voluntary Correction.

The Notice of Voluntary Correction shall be personally served on the alleged violator, if reasonably possible. If personal service is not reasonably possible, the Notice of Voluntary Correction shall be posted on the parcel associated with the violation and mailed to the alleged violator by certified mail, return receipt requested. The failure of any such person to receive the actual Notice of Voluntary Correction shall not affect the validity of any proceedings taken under this Title. The voluntary correction process is optional as deemed by the Director. If the Director or Director's designee believes that the requirements of this Section are not being met, the Director or Director's designee may, in addition to the Notice of Voluntary Correction, issue a Stop Work Order.

48.10.060 Extension for Compliance.

- (a) Upon good cause shown by the alleged violator, the Director or Director's designee may grant an extension from the operation of this Title in order to allow the alleged violator to take corrective action as outlined in the Notice of Voluntary Correction not to exceed thirty (30) days. Such extension may be renewed at the discretion of the Director or Director's designee for an additional thirty (30) days, but only if satisfactory progress toward compliance is shown.
- (b) Any person seeking an extension shall file an application with the Director on forms provided by the Department. Any such request for an extension must be received by the Director at least five (5) business days prior to the date set for compliance in the Notice of Voluntary Correction.
- (c) In granting or denying an extension of the date set for compliance, the Director or Director's designee shall file a written order stating the facts and reasons leading to the decision, which is due no later than the date set for compliance in the Notice of Voluntary Correction.
- (d) A request for an extension shall not in any manner preclude the alleged violator from seeking any other relief available under Tribal law.

48.10.070 Stop Work Order.

Whenever a continuing violation of this Title or any regulations adopted pursuant to this Title will:

- (a) materially impair the Department's ability to secure compliance; or
- (b) threaten the health or safety of the public; or
- (c) threaten or harm natural resources,

The Director or Director's designee may issue a Stop Work Order specifying the violation and prohibiting any work or other activity at the site. The Order shall be posted on the subject property, and if possible, shall be served in person on persons engaged in any work in violation of this Title. No further work or activity shall proceed unless and until authorized by the Director or Director's designee in writing. Failure to comply with a Stop Work Order shall constitute a violation of this Title.

48.10.080 Notice of Violation.

In the event the alleged violator fails to take corrective action according to a properly served Notice of Voluntary Correction, or when the Director or Director's designee believes that a violation can only be promptly and equitably corrected by an immediate Notice of Violation, the Director or Director's designee may issue the alleged violator a Notice of Violation.

48.10.090 Contents of Notice of Violation.

For violations of this Title or regulations adopted pursuant to this Title, the Notice of Violation shall contain the following information:

- (a) The name and address of the alleged violator;
- (b) The street address or a description sufficient for identification of the property where the alleged violation occurred;
- (c) A brief statement describing the act and/or omission alleging a violation of this Title;
- (d) A statement that if any work is not completed within the times specified, the Director or Director's designee will proceed to cause abatement of the violation and cause the work to be done and charge costs as a lien against the property, if applicable;
- (e) A statement that a monetary penalty of no more than three hundred dollars (\$300.00) per day for each violation shall be assessed against the alleged violator(s);
- (f) A statement that if any assessed civil penalty is not paid, the Director will charge the amount of the penalty as a lien against the property, if applicable, and as a personal obligation of any person in violation of this Title or regulations adopted pursuant to this Title;
- (g) A statement regarding how the alleged violator shall respond, as outlined in this Section, and that such Response shall be filed with the Quinault Tribal Court and a copy served upon the Quinault Indian Nation Office of Reservation Attorney within thirty (30) calendar days of service of the Notice of Violation; and
- (h) A description of the available appeal process.

48.10.100 Service of Notice of Violation.

A copy of the Notice of Violation shall be served in the same manner as service of the Notice of Voluntary Correction outlined in this Section. The original Notice of Violation shall be filed with the Quinault Tribal Court Clerk and a copy shall be served on the Quinault Indian Nation Office of Reservation Attorney. The failure of any such person to receive the actual Notice of Violation shall not affect the validity of any proceedings taken under this Title.

48.10.110 Appeal of Notice of Violation.

The Notice of Violation may be appealed within fourteen (14) calendar days from the date of the Notice of Violation to the Quinault Tribal Court, pursuant to the provisions of Q.T.C. 30. Any per-day civil penalty shall not accrue during the pendency of such administrative appeal, unless the Quinault Tribal Court determines that the appeal is frivolous or intended solely to delay compliance. Failure to file a timely and complete appeal will constitute a waiver of all rights to an appeal of the Notice of Violation.

48.10.120 Hearings.

- (a) Commencement of Proceedings. The filing of the Notice of Violation shall serve as an initial summons and complaint in Quinault Tribal Court.
- (b) Response. Each person issued a Notice of Violation under this Title shall return a copy of the Notice of Violation within fourteen (14) calendar days to the Quinault Tribal Court. The person issued the Notice of Violation shall check either:

1. I CHOOSE TO PAY THE MONETARY PENALTY AND HAVE ENCLOSED FULL PAYMENT.

2. I REQUEST A HEARING TO EXPLAIN THE CIRCUMSTANCES. If a person requests a hearing, the Court shall issue a Notice of Hearing with a date and time certain.

3. I REQUEST A HEARING TO CONTEST THIS VIOLATION NOTICE.

- (c) **Timeline for Hearing.** Upon the timely filing of a response, the Quinault Tribal Court shall set a hearing within thirty (30) calendar days, which may be continued for good cause. In the event a hearing is not set within thirty (30) days, the Notice of Violation shall be dismissed. A party may appear for a hearing by telephone with prior approval of the Quinault Tribal Court.
- (d) **Conduct at the Hearing.** Hearings shall be governed by Q.T.C. 30.
- (e) **Order on Hearing.** Following the conclusion of the hearing, the Court shall issue a written decision. The decision shall state the findings of fact, conclusions of law, and order. The order shall include any and all costs as deemed appropriate by the Court.
- (f) **Appeals.** Should either party be unsatisfied with the result, that party may commence an appeal with the Quinault Tribal Court of Appeals pursuant to Q.T.C. 31.

48.10.130 Penalties.

Unless otherwise provided, each act of violation and every day on which such violation occurs shall be a separate violation subject to penalty assessment. A violation of this Title or regulations adopted pursuant to this Title are subject to a fine of not more than three hundred dollars (\$300.00) per day.

48.10.140 Complaints from the Public.

Whenever a violation of this Title or regulations adopted pursuant to this Title occurs or is alleged to have occurred, any person may file a written complaint with the Director or Director's designee. Such complaint shall state fully the basis thereof. The complaining party shall provide an address and phone number to enable the Director or his/her designee to contact the complaining party about the written complaint. The Director or his/her designee shall properly record such complaint, investigate as soon as reasonably practicable, and take any necessary action thereon as provided by this Title.

48.11 Miscellaneous.

48.11.010 Severability.

If any section, subsection, sentence, clause or phrase of this Title is, for any reason, held to be invalid, in general or in any specific application, such decision shall not affect the validity of the remaining parts of this Title or the specific application of this Title.

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TITLE 30B

RULES OF CIVIL PROCEDURE

30B.01.010 Scope

This Title governs the procedure in all civil proceedings and shall be interpreted consistent with Title 30.

30B.02.010 Civil Action

All forms of action will be known as a civil action. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

30B.03.010 Commencement of Action

A civil action is commenced by the filing of a complaint in the Quinault Tribal Court with the clerk of the court. A complaint must be accompanied by a filing fee of \$50.00 unless the Court finds that the plaintiff is indigent and unable to pay the filing fee or the plaintiff is the Quinault Indian Nation or an entity, agency or enterprise of the Quinault Indian Nation.

30B.04.010 Complaint

A complaint shall state the following;

- (a) Name of the plaintiff;
- (b) Name of the defendant;
- (c) Facts constituting the grievance;

- (d) Request for a jury trial if desired;
- (e) The relief requested.

A complaint shall be signed by the plaintiff. A complaint may be amended at any time prior to trial if properly filed and served and if it does not prejudice the defendant. The court shall give the defendant reasonable time to answer an amended complaint and conduct further discovery.

30B.05

Summons and Service

30B.05.010

Summons

Upon filing of a complaint the Clerk shall issue a summons to which will be attached a copy of the complaint directing the defendant to appear before the Quinault Tribal Court at the time and place specified in the summons. The defendant shall be required to appear no later than 30 judicial days from the date the summons and a copy of the complaint is served on the defendant. A defendant shall file a Notice of Appearance with the Clerk of the court and serve same on the plaintiff no later than 20 judicial days from the date the summons and complaint is served on the defendant in leu of personal appearance before the court.

30B.05.020

Service

The summons and complaint shall be served on the defendant by personal service or registered mail.

- (a) Service by mail shall be made by the clerk by registered mail, return receipt requested. The return receipt signed by the defendant shall be filed in the court file and is evidence of receipt of notice.
- (b) Personal service shall be made by a person over 18 years old by leaving copies of the summons and complaint on the door of the defendant's abode or by handing the summons and complaint to the defendant personally. The plaintiff may not personally serve the defendant. An affidavit of service shall be returned to the clerk and filed with the court file and is evidence of service.
- (c) All subsequent pleadings, after service of the Summons and Complaint may be served in a manner consistent with this provision or by mailing a copy by first class mail properly addressed and postage prepaid to the parties or, if represented, their counsel.
- (d) Any person subject to the jurisdiction of the Quinault Tribal court may be served outside the territorial jurisdiction of the court in the manner provided herein with the same force and effect as if the service had been made within the territorial jurisdiction thereof if

such person:

- (1) Transacts business or commits an act leading to a tort action within the Quinault Indian Reservation.
- (2) Owns, uses or possesses any property or interest therein within the Reservation.
- (3) Contracts for services to be rendered or goods to be furnished within the Reservation.
- (4) Is related to a member of the Quinault Indian Nation by blood, marriage or adoption, and the claim before the court involves the status of that relationship.
- (5) Possesses some other relationship to the Quinault Indian Reservation, Quinault Nation or its members which gives the Quinault Tribal Court subject matter and personal jurisdiction over the claim and defendant.

30B.06.010

Answer

- (a) The defendant shall serve an answer to the complaint within 30 judicial days after service of the summons and complaint.
- (b) An answer shall assert any defenses, counter-claims or set-offs.
- (c) The Answer shall contain a request for a jury

if desired.

- (c) An answer may be amended to respond to an amended complaint or upon motion to the Court. The Court shall grant a motion to amend the answer if it finds the amendment will not prejudice the plaintiff.

30B.07.010

Third-Party Practice

- (a) The defendant may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the defendant for all or part of the plaintiff's claim. The defendant must serve the summons and complaint within 20 judicial days after the defendant serves his original answer. Otherwise the defendant must obtain the court's permission upon notice to all parties to the action.
- (b) The plaintiff may cause a third party to be brought in under circumstances which under this provision would entitle the defendant to do so.

30B.08.010

Joinder

- (a) A party asserting a claim to relief as an original claim, counterclaim cross-claim or third-party claim, may join, either as independent or as alternate claims, as many

claims as the party has against the opposing party.

(b) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party if the person's absence will prevent the court from granting complete relief to those already parties or the person claims an interest relating to the subject matter of the action and is so situated that the disposition of the action in the person's absence may impede the person's ability to protect that interest. If a person joinable cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court are:

- (1) To what extent a judgment rendered in the person's absence might be prejudicial to the person or any other party;
- (2) The extent to which by shaping relief the prejudice can be avoided;
- (3) Whether the judgment rendered in the

person's absence will be adequate;

- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

30B.09.010

Permissive Joinder

(a) A person may join in one action as a plaintiff if they assert any right to relief jointly, severally or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any questions of law or fact common to all these persons will arise in the action.

(b) A person may join in one action as a defendant if there is asserted against them jointly, severally or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

30B.10

Discovery

30B.10.010

Methods

(a) Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written

interrogatories; production of documents or things or permission to enter upon land or other property; for inspection and other purposes; physical and mental examinations and requests for admissions.

(1) After the summons and complaint have been served any party may take the testimony of any person including a party by deposition upon oral examination. A party desiring to take the deposition of any person, other than another party, upon oral examination shall serve on every other party and the person to be examined a subpoena indicating the time and place of the examination. A party desiring to take the deposition of another party shall serve on every other party and the party to be examined reasonable notice of the time and place of the examination. The person examined shall be placed under oath and the examination may be recorded by any means that will accurately reflect the questions and answers. The party requesting oral examination will bear the expense of the examination and provide

the other parties, at reasonable cost, an accurate record of the examination.

(2) When the mental or physical condition of a party or person under legal control of a party is in controversy, the Court may order a mental or physical examination of that person. The order may be made only on a motion for good cause and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is made. The party examined may request, at no cost, the examiner's report.

(3) When a party requests documents or things the other party shall permit the requesting party to inspect and copy the documents or things.

30B.10.020

Scope of Discovery

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or of the other party, including but not limited to the identity of each person a party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected

to testify and a summary of the grounds for each opinion. The frequency and extent of use of discovery methods shall be limited by the Court if it determines that the discovery sought is cumulative, duplicative, unduly burdensome or expensive. Upon motion by a party or person from whom discovery is sought, and for good cause, the court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense.

30B.10.030

Notice

A party requesting discovery must afford the other party reasonable notice and a reasonable time to respond. Upon a motion of a party, and for good cause, the Court may make any order which justice requires, to control the method, manner and timing of discovery.

30B.10.040

Discovery Costs

Each party shall pay its own discovery costs unless the Court finds a manifest injustice in which case the Court shall apportion the costs between the parties.

30B.10.050

Sanctions

The Court, upon a showing of good cause, may impose any sanction it deems appropriate under the circumstances of the case for a parties failure to

provide discovery or conduct discovery in good faith.

30B.11.010

Subpoena

- (a) The Court shall order by subpoena the appearance of any person to require that person's attendance before the Court or their attendance at a deposition. The Court may also order the production of books, records, papers documents or other physical evidence.
- (b) A subpoena may be served in the manner provided for in this Code.
- (c) Failure by any person without adequate excuse to obey a subpoena may constitute contempt of court.

30B.12

Jury Trial

30B.12.010

Request

In any civil case a trial by jury may be requested by either party litigant, except in cases which under the laws of the Washington State are not subject to the right to a jury, including but not limited to cases involving domestic relations, probate, adoptions, minors, incompetents, injunctions, civil contempt, appeals and small claims. If a jury is not requested the case will be tried by the Court. If a jury is requested the Court may conduct a pre-trial hearing to rule on

any legal issues brought by any party and to determine what instructions shall be given to the jury.

30B.12.020

Procedures

A request for a jury must be contained in the Complaint or Answer filed with the court. The request for a jury must be confirmed in writing with the court no later than 20 judicial days before trial. The cost of the jury shall be paid by the party or parties demanding the jury no later than 20 judicial days before the scheduled trial date. The party or parties demanding the jury may recover the cost of the jury from the other party in the event the verdict is in favor of the party demanding the jury.

30B.12.030

Number of Jurors

The number of persons serving on a jury shall be 6, not including alternates.

30B.12.040

Composition of Jurors

The jury shall be composed from a list of residents of the Quinault Indian Reservation as certified to the Chief Judge by the Quinault Business Committee. Such list shall be published and made available to the parties to a case and the public. The list shall be revised from time to time by the Quinault Business Committee.

30B.12.050 Selection of Jury

The clerk of the court shall prepare separate ballots containing the names for the jurors summoned who have not been excused by the court and deposit the ballots in a box. The clerk shall then draw at random 6 names for the purpose of voir dire examination. Any additions to the panel shall be drawn using the same procedure until a jury has been selected.

30B.12.060 Voir Dire

A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of preemptory challenges. The Court may permit each party to conduct the examination or the Court may itself conduct the examination. If the Court conducts the examination it shall permit each party to submit additional supplemental questions as it deems proper.

30B.12.070 Disqualification

A juror shall be deemed incompetent due to a mental or physical defect or ailment that render the juror incapable of performing the duties of a juror.

30B.12.080 Challenges

Either party to a case may challenge not more than

two (2) jurors without cause and any number for cause which shall consists of, but not limited to:

(a) Having been a juror, party or witness in any civil or criminal case involving the same facts and parties.

(b) Having a close family, business or legal relationship with the defendant, plaintiff or witnesses.

30B.12.090

Jurors' Oath

When a jury has been seated, the juror's oath shall be administered by the judge or the clerk.

30B.12.100

Duties

The Court may order the jury to view the premises where the offense or other material facts occurred. The Court may allow jurors to take notes regarding the evidence. The Court may order the discharge of a juror who becomes sick or otherwise unable to perform the duties of a juror and substitute the alternate juror. In the absence of an alternate and the failure of the parties to stipulate to continue the trial with five or less jurors, the jury shall be discharged and a new jury shall be selected to hear the case.

30B.13.010

Instructions

Each party has the right to have the jury instructed, in writing, so that they can argue

their theory of the case. The judge shall charge the jury orally and in writing stating the law applicable to the case. At any time during the trial the judge may instruct the jury as to the law after notice to both parties or in the presence of both parties. The parties may offer supplemental jury instructions at any time before the jury retires to deliberate. Any objections to any instruction not made before the jury retires to deliberate shall be deemed waived.

30B.14.010

Verdict

A verdict in a civil case may be rendered by four jurors. If the plaintiff fails to win the majority of votes, judgment shall be entered in favor of the defendant and the case dismissed.

30B.15.010

Bench Trial

In a case tried without a jury, the judge shall hear and determine the evidence in support of the complaint and any counterclaims. Upon the request of either party the court shall make specific written findings of fact and conclusions of law.

30B.16

Motions

30B.16.010

Dismissal

Any party may at any time after the complaint is filed move the Court for an order dismissing the complaint.

30B.16.020 Summary Judgment

- (a) A party seeking to recover upon a claim, counterclaim or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment upon all or any part for the claim, counterclaim or cross claim.
- (b) A party against whom a claim, counterclaim or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgement as to all or any part thereof.
- (c) The judgment sought shall be granted if the Court finds there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

30B.16.030 New Trial

A motion by any party for a new trial must be filed within 10 judicial days after the verdict or decision. The Court may extend the time for filing a new trial motion if good cause is shown as to why the motion was not timely filed. The court shall

grant the motion if the court finds any of the following:

- (a) The jury received evidence not authorized or admitted by the court;
- (b) The verdict was determined by lot, through intimidation or without a fair expression of opinion;
- (c) Irregularity in the proceedings of the court, jury or adverse party, preventing a fair trial;
- (d) There is newly discovered evidence which was not available or which could not have been discovered at the time of trial;
- (e) Damages so excessive or inadequate or error in the assessment of the amount of recovery as to indicate the verdict must have been a result of prejudice or passion;
- (f) Error in law occurring at trial and objected to at that time;
- (g) The verdict is contrary to law or the evidence;
- (h) That substantial justice has not been done.

30B.16.040

Arrest of Judgment

The court shall at any time relieve a party from a final judgment and dismiss the case for any of the following reasons:

- (a) Lack of jurisdiction over the party or the crime;
- (b) Fraud in obtaining the judgment;
- (c) The judgment is void;
- (d) Mistakes or irregularities in obtaining the judgment;
- (e) Death of one of the parties before the entry of the judgment;
- (f) The judgment has been satisfied, released or discharged;
- (g) Any other reason justifying relief from the judgment.

30B.16.050

Other

Any party may at any time after the complaint is filed move the Court for any relief so requested.

30B.16.060

Notice

Any pre-trial or post-trial motions brought by any party must be filed and served on the other party no later than 10 judicial days before any scheduled hearing on the motion. The Court, on a showing of good cause, may waive the notice requirements of this rule.

30B.16.070

Hearings

A hearing on any motion shall be set by the Clerk of the Court. The Court may adopt its own procedural rules to govern the scheduling of

hearings on motions.

30B.17.010

Counsel

Each litigant in a civil case shall have the right to have counsel of his choice represent him at his own expense. No counsel may testify as a witness at trial except upon permission of the court.

30B.18.010

Consolidation/Separation

When actions involving a common question of fact or law are pending before the court, it may order a joint hearing or trial of any or all matters at issue. In the furtherance of convenience or to avoid prejudice the court may order a separate trial of any claims or issues.

30B.19.010

Testimony/Record

The testimony of witnesses shall be taken orally in open court, unless otherwise directed by the Court or by law. Testimony of witnesses shall be under oath. Unless the parties and the court agree that a proceeding not be recorded, all proceedings shall be electronically recorded. Any party, at its own expense, may additionally arrange for a court reporter to record any proceeding.

30B.20.010

Damages

In an action for damages a plaintiff can request reasonable punitive damages if the jury or Court make a specific finding that the defendant acted

willfully or intentionally. A request for punitive damages must be set forth in the complaint. If both the plaintiff and the defendant are found to be a fault, damages will be apportioned according to the degree of fault. When a case is tried to a jury, a party or the Court may request that the jury determine the plaintiffs degree of fault.

30B.21.010

Judgments

At the conclusion of a proceeding the court shall enter a judgment in favor of the plaintiff or the defendant or both. A judgment for damages shall be considered a lawful debt in all procedures to distribute a decedent's estate.

30B.22.010

Default Judgments

When the defendant fails to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the court may render a judgment granting such relief as the evidence warrants. The defaulting party may apply in writing for a new trial within 10 judicial days of a default judgment, after showing good cause for his failure to answer the summons. The court may set aside the default judgment on such terms as it deems just. When the plaintiff fails to appear at the time set by the summons for hearing, the court

may dismiss the cause with prejudice.

30B.23.010

Enforcement of Judgment

- (a) The court may enforce judgments in civil proceedings by issuing a Writ of Execution against any eligible personal property of the party against whom judgment is rendered located within the boundaries of the Quinault Indian Reservation, returnable not less than 10 days after the day of issuance. The Writ shall be served by a Law Enforcement Officer. The Writ of execution may specify personal property to be seized in satisfaction of any judgment and any property seized may be subject to sale by the court to satisfy the judgment after 10 days notice by posting public notice of such sale. The sale will be conducted by the clerk of the court and will be to the highest bidder for cash. The Clerk of the Court shall set a minimum bid. The proceeds of such sale will be paid as follows:
- (1) Costs of the sale;
 - (2) Unpaid court costs;
 - (3) The amount of the unsatisfied judgment;
 - (4) The balance will be paid to the defendant.
- (b) The Court may enforce judgments in civil

proceedings by issuing a Writ of Garnishment directed to any person or corporation located or doing business on the Quinault Indian Reservation. The Writ of Garnishment shall state with specificity the amount of the unsatisfied judgment, the terms of the Garnishment and the rights of the defendant and garnishee to object to the Writ.

- (1) The Writ shall direct the garnishee to pay any earnings or money owed to the defendant to the judgment creditor. The court shall limit the garnishment to 50% of the defendant's earnings in any pay period. If the garnishee is a financial institution the Writ shall direct the garnishee to pay the judgment creditor no more than the amount of the unsatisfied judgment plus costs and attorney's fees.
- (2) The Writ shall state that a garnishee's failure to respond to the Writ shall make the garnishee liable for the amount of the unsatisfied judgment.
- (3) The Writ shall be served on both the defendant and the garnishee by a Law Enforcement Officer.
- (4) A garnishee's failure to respond to a

Writ without lawful excuse shall make the garnishee liable to the judgment creditor for the amount of the unsatisfied judgment.

(5) Within 10 judicial days from the date the Writ of Garnishment is served on both the garnishee and the defendant the garnishee or the defendant may file an objection to the Writ. If an objection is filed a hearing will be held within 10 judicial days from the date the objection is filed. The person filing the objection shall serve all parties to the action a notice of the hearing no later than 5 judicial days before the date of the hearing. At the hearing the Court shall determine whether the Writ was properly issued.

(c) An unsatisfied judgment may be filed in a lien against funds owing the defendant by the Quinault Nation by having the clerk deliver a copy of the judgment to the President or Vice-President and they shall pay over the amount specified in the judgment as funds become available to the credit of such part. Any unpaid amount of the judgment shall remain

unsatisfied.

(d) The Court may issue a prejudgment Writ of Attachment or Garnishment as security for the satisfaction of such judgement the plaintiff may recover, upon notice to the defendant of the right to a prompt hearing at which the plaintiff shall establish probable validity of the claim sued on and probable cause to believe that grounds of an attachment exist, the posting of a bond in an amount determined by the court and affidavit:

(1) That the defendant as concealed himself or herself to avoid service; or

(2) That the defendant has or is about to remove, assign, or dispose of any of his property with the intent to delay or defraud his creditors; or

(3) That the object for which the action is brought is to recover on a contract, express or implied.

(e) The Court may upon motion issue a writ of attachment or any other writ or order allowed under Washington State law in order to enforce a valid judgment.

30B.24.010

Time Limitations

No judgment of the court for money shall be

enforceable after five years from the date of entry, unless the judgment shall have been renewed once before the date of expiration, by institution of appropriate proceedings in the court by the judgment creditor filing an application and the Court thereupon shall order the judgment renewed and extended for an additional year.

30B.25.010

Satisfaction of Judgment

It is not the burden of the court to insure satisfaction of a judgment. The judgment creditor must notify the court in writing of full or partial satisfaction.

30B.26.010

Costs

In any civil case the court may award the winning party costs and/or attorneys fees if the court determines that it would be equitable to do so. Costs and/or attorney fees shall not be allowable against the Quinault Indian Nation or an entity or enterprise thereof which may be a party in a civil case.

30B.27.010

Repeal

Title 15 of this Code is hereby repealed and replaced by this Title. Any reference in any other provision of this Code to a specific section of Title 15 shall mean the specific section of this Title that addresses the referenced matter.



Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (206) 278-8211

RESOLUTION NO. 92-48-70 QUINAULT BUSINESS COMMITTEE

WHEREAS, the Quinault Business Committee is the governing body of the Quinault Indian Nation and;

WHEREAS, the Quinault Business Committee is charged with the duty of protecting the health, welfare and safety of the People of the Quinault Indian Reservation and;

WHEREAS, the Quinault Business Committee is also charged under Article V Section 3 the Constitution of the Quinault Indian Nation to establish a Tribal Court and provide for its procedures and;

WHEREAS, Titles 10, 15 and 30 of the Quinault Tribal Code currently set forth the rules of Criminal Procedure, Civil Procedure and Rules of the Court respectfully and;

WHEREAS, Titles 10, 15 and 30 of the Quinault Tribal Code no longer adequately address the procedures and rules necessary to provide for the orderly administration of justice in the Quinault Tribal Court and;

WHEREAS, it is confusing to litigants when the Tribal Court rules and procedure are contained in separate sections of the Quinault Tribal Code and;

WHEREAS, it is possible to amend or replace those Titles to provide for the orderly administration of justice and to place those Titles in one Section of the Tribal Code and;

WHEREAS, Title 30 has been amended and Titles 10 and 15 have been and replaced by Titles 30A and 30B respectively to effectuate the orderly administration of justice and to allow the Tribal Court rules and procedures to be located sequentially in the Quinault Tribal Code and;

WHEREAS, public hearings were held in Queets and Taholah on July 20, 1992, and comments were taken on amended Title 30 and new Titles 30A and 30B;

NOW, THEREFORE, BE IT RESOLVED that Title 30 as amended and new Titles 30A and 30B are enacted into law and shall be placed sequentially in the Quinault Tribal code and;

BE IT FURTHER RESOLVED, that Titles 10 and 15 are hereby repealed and replaced with Titles 30A and 30B respectively as of August 31,

1992, and:

BE IT FURTHER RESOLVED, that amended title 30 and Titles 30A and 30B shall govern all cases filed in the Quinault Tribal Court after August 31, 1992.

Joseph DeLaCruz
Joseph DeLaCruz, Chairman
Quinault Business Committee

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the Business Committee at Taholah, Washington, on the 27th day of July 1992, at which time a quorum was present by a vote of 7 FOR, 0 AGAINST and 0 ABSTAIN.

Margie Valdillez
Margie Valdillez, Secretary
Quinault Business Committee

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TITLE 30A

RULES OF CRIMINAL PROCEDURE

30A.01.010

Scope

These rules are adopted to govern procedure in the Quinault Tribal Court in all criminal proceedings. These rules shall be interpreted consistent with the Indian Civil Rights Act, Constitution of the Quinault Indian Nation and Title 30.

30A.02.010

Rights Of The Accused

In all proceedings for offenses punishable by loss of liberty the defendant shall have the following rights:

- (a) The right to be present at every stage of the proceeding.
- (b) The right to defend in person, by retained counsel or appointed counsel at no expense if the defendant qualifies for appointed counsel and appointed counsel is available.
- (c) The right to know the nature and cause of the charge and to receive a copy of the complaint.
- (d) The right to cross examine witnesses.
- (e) The right to compulsory process to obtain testimony of witnesses in his behalf and to obtain physical evidence within the jurisdiction of the Quinault Indian Nation.

- (f) The right to a speedy and public trial.
- (g) The right to an impartial jury.
- (h) The right to remain silent the exercise of which shall not be used against the accused in court nor commented upon by the prosecution.
- (i) The rights enumerated under the Indian Civil Rights Act.

30A.03.010

Nature and Contents of Complaint

All criminal proceedings shall be initiated by complaint filed in the Quinault Tribal Court. To be valid the complaint shall be signed by the complaining witness and the judge or by the tribal prosecutor and shall:

- (a) State the name of the defendant the essential facts constituting the offense charged in plain ordinary language, including the time and place of the alleged offense, and whether the offense occurred within the jurisdiction of the Quinault Indian Nation.
- (b) Contain the citation to the Quinault Tribal Code or other provision of law which the defendant is alleged to have violated.

30A.04.010

Amendment of Complaint

The Court may permit a complaint to be amended at any time before trial if substantial rights of the defendant are not prejudiced.

30A.07.020 Conditions of Release

If the Court determines that recognizance will not ensure the appearance of the accused and there is probable cause to believe the accused has committed the charged offense the Court may impose the least burdensome or restrictive of the following conditions for release of the accused:

- (a) Bail in the form of a cash or surety bond in an amount deemed sufficient by the Court to ensure appearance and/or;
- (b) Restrictions on travel, association activities and any other conditions deemed reasonably necessary to assure appearance of the accused when required and to reduce danger to others and the community.

30A.07.030 Order on Release

If the Court imposes conditions of release it shall issue an order containing those conditions and inform the accused of those conditions and the possible penalties for violation of those conditions.

30A.07.040 Violations of Conditions of Release

Upon the Court's own motion or motion by the prosecuting attorney that the accused has willfully violated a condition of release the Court shall order the accused to appear for immediate hearing.

If the accused does not appear after being properly served the Court may issue an arrest warrant to ensure appearance and the forfeiture of bail or bond. If by clear and convincing evidence it is found that the accused has violated the conditions of release the Court may impose additional conditions or order the defendant detained pending trial.

30A.07.050 Detention

No person shall be detained, jailed or imprisoned for a period longer than 36 hours (exclusive of Saturdays, Sundays and holidays) without a hearing before a judge of the Quinault Tribal Court. If a hearing is not held within 36 hours the accused shall be released from custody.

30A.07.060 Return of Surety

Any cash or property given as security by the accused shall be applied to any ordered fines or costs. Any cash or property given as security by anyone else on behalf of the accused shall be returned by the Court upon entry of a verdict of not guilty or upon execution of a sentence.

30A.08 Arrest and Summons

30A.08.010 Arrest Warrant

If a complaint is filed and it appears from the complaint or from affidavits or sworn testimony,

that there is probable cause to believe that an offense has been committed and the defendant committed the offense, the Court may, upon the request of the prosecuting attorney, issue a warrant for the arrest of the defendant. Any testimony in support of an arrest warrant shall be electronically recorded.

(a) The warrant shall specify the name of the defendant, or if the name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant shall specify the offense or offenses charged in the complaint, the date of issuance and the signature of the issuing judge. The warrant shall command the defendant be brought before the court forthwith. The warrant may also set forth bail.

(b) An arrest warrant shall be executed by a qualified Law Enforcement Officer and upon execution of the warrant or the failure to find the defendant, the law enforcement officer shall endorse the warrant and return it to the Clerk of the Court. Any unexecuted warrant may be canceled by the judge who issued the warrant. A copy of the warrant shall be given to the defendant at the time

the warrant is executed.

30A.08.020 Arrest Without a Warrant

No law enforcement officer shall arrest without a warrant any person for any offense unless:

- (a) The offense was committed in the presence of the officer or;
- (b) The officer has probable cause to believe the person is committing or about to commit an offense or;
- (c) The officer has probable cause to believe the person has committed an offense and exigent circumstances prevent the officer from obtaining an arrest warrant or;
- (d) A warrantless arrest is specifically authorized by any other provisions of this Code.

30A.08.030 Warnings

When a person is arrested he or she shall be informed:

- (a) Of the right to remain silent and that any statement made may be used against them in a court of law and;
- (b) Of the right to retain an attorney of his or her choosing and to have the attorney present before and during questioning or the making of a statement and;

- (c) The right to request to have an attorney be appointed if the defendant cannot afford an attorney and;
- (d) The right to exercise any of the above rights at any time before or during questioning.

30A.08.040

Summons

If a complaint is filed the Court shall direct the Clerk to issue a summons commanding the defendant to appear before the court at a specified time and place. A summons will issue in lieu of a warrant unless the Court finds there is reasonable cause to believe that the defendant will not appear in court in response to a summons, or that arrest is necessary to prevent serious bodily harm to another or the accused.

- (a) A summons shall be in writing and state the name of the defendant, the date issued, the time and place the defendant is to appear before the court and the reason the defendant has been commanded to appear. The summons shall be signed by the Judge or the Court Clerk.
- (b) A summons shall be served by a law enforcement officer who shall deliver a copy of the summons to the defendant personally or by certified or registered mail, return receipt

requested.

- (c) If a person fails to appear in response to a summons, or the officer has diligently attempted to serve the summons and has a reasonable belief that service cannot be effected, the Court may issue a warrant for arrest.

30A.09

Search and Seizure

30A.09.010

Authority to Issue Search Warrant

A search warrant may be issued by the judges of the Quinault Tribal Court.

30A.09.020

Property Which May Be Searched and Seized

A warrant may be issued to search for and seize any evidence or property within the jurisdiction of the Court.

30A.09.030

Issuance

No warrant shall be issued except upon probable cause supported by oath or affirmation that an offense has been committed and property used, intended for use, or which has been used in the commission of that offense or contraband or evidence of an offense will be found at the place or on the person to be searched.

30A.09.040

Contents

- (a) The warrant shall with particularity describe the place thing or person to be searched, the

items to be seized and the reason for the issuance of the warrant.

- (b) The warrant shall authorize that it be served by a Quinault Nation Law Enforcement Officer between 7:00 a.m. and 7:00 p.m. and shall specify the date or dates for the search.
- (c) The judge may for good cause authorize service of the warrant at a time other than between 7:00 a.m. and 7:00 p.m. and such authorization shall be noted on the warrant.

30A.09.050

Execution and Return

- (a) The law enforcement officer taking the property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property. If no such person is present the officer shall post a copy of the warrant and a receipt.
- (b) The officer shall inventory the items taken in the presence of the person from whose possession the property is taken or, if that person is unavailable, at least one other person.

30A.09.060

Warrantless Search and Seizure

- (a) No law enforcement officer shall search any person without a warrant unless:

- (1) The officer has probable cause to believe that the person has committed an offense and is in possession of property related to the commission of the offense and exigent circumstances prevent the officer from obtaining a warrant or;
 - (2) The search is incident to a lawful arrest or;
 - (3) The person knowingly and voluntarily consents to the search or;
 - (4) The officer has reasonable suspicion that a person is armed and dangerous.
- (b) No law enforcement officer shall search any premises, vehicle, boat or property without a warrant unless:
- (1) The officer has probable cause to believe evidence of a crime will be found in the place to be searched and exigent circumstances prevent the officer from obtaining a warrant or;
 - (2) The person knowingly and voluntarily consents to the search;
 - (3) The search is incident to a lawful arrest and limited to the area within the vicinity of the arrestee;
 - (4) The search is pursuant to any federally

recognized exception to the warrant requirement.

30A.10 Intercepting Communications

30A.10.010 Authorization

A judge of the Quinault Tribal Court may authorize a law enforcement officer to intercept, transmit, record or disclose an oral communication or conversation where the officer is a party to the conversation or communication or one of the parties to the communication or conversation has given prior consent.

30A.10.020 Grounds

No authorization to intercept, record or disclose an oral or private conversation or communication shall be issued except upon probable cause supported by oath or affirmation that the nonconsenting party has committed, is engaged in, or about to commit an offense.

30A.10.030 Content of Authorization

Authorization under this provision shall state the name of the nonconsenting party, if known by the law enforcement officer, and the particular time and place for the interception, transmission, recording or disclosure of the communication or conversation: **Provided:** That if the judge determines that there is probable cause to believe

the conversation or communication concerns the sale, manufacture, delivery or possession of a controlled substance, the time or place of the interception, transmission, recording or disclosure need not be stated with particularity.

30A.10.040 Time Limitation

Authorizations issued under this provision shall be effective for not more than 7 days, after which period the issuing judge may renew or continue the authorization for an additional periods not to exceed 7 days.

30A.10.050 Admissibility

Any communication or conversation recorded under this provision shall be lawful and admissible at trial.

30A.11 Video or Sound Recordings

30A.11.010 Telephone Calls

It shall be lawful to record incoming telephone calls to police and fire stations, emergency medical service providers and emergency centers.

30A.11.020 Arrested Persons

(a) Video or sound recordings may be made of arrested persons by police officers under the following conditions:

- (1) The arrested person shall be informed that a recording is being made and the

statement so informing the person shall be included in the recording;

(2) The recording shall commence with an indication of the time and date and end with the time of termination of the recording;

(3) The arrested person shall be informed of his or her rights under this Title and such statements informing the person of those rights shall be included in the recording.

(b) The recordings shall only be used for valid police or court activities and shall be admissible at trial.

30A.12

Time for Trial

30A.12.010

Time for Arraignment, Pretrial Hearing and Trial

A defendant shall be arraigned not later than 30 judicial days after the date the complaint is served on the defendant. A defendant shall be brought to trial not sooner than 7 and no more than 90 judicial days from the date of arraignment.

30A.12.020

Extensions of Time for Trial

(a) The Court may extend the date of trial for good cause. No extension of the trial date shall exceed 30 judicial days from the date the extension is granted.

(b) The Court may extend the date of trial upon agreement of the parties.

(c) If before the jury retires to determine its verdict the Court orders a mistrial or, if after verdict the Court orders a new trial, the defendant shall be brought to trial not later than 90 judicial days from the order.

30A.12.030 Setting the Trial Date

At the arraignment the Court shall set a date for trial. If the defendant does not waive his or her right to a jury trial the Court may also set a date for a pretrial hearing.

30A.12.040 Pretrial Hearing

At the pretrial hearing the parties shall bring any motions that can be ruled on before trial and the parties shall submit their proposed instructions to the jury. Failure to bring any motion that should have been brought at the pretrial hearing may be deemed a waiver. Failure to submit proposed instructions at the pretrial hearing may bar a party from excepting to an instruction not given.

30A.13.010 Arraignment

(a) At the arraignment the defendant shall be informed of:

- (1) The nature of the charge;
- (2) The penalties prescribed by the Quinault

Tribal Code and;

(3) The rights afforded a defendant under the Quinault Tribal Code.

(b) The judge shall ask the defendant to plead guilty, not guilty or no contest. If the defendant pleads not guilty the judge may ask the defendant if he or she wishes to waive the right to a jury trial. If the defendant fails to plead, the judge shall order the entry of a plea of not guilty and schedule the case for a jury trial unless the defendant affirmatively waives the right to a jury trial.

30A.14

Discovery

30A.14.010

Prosecutor's Obligations

Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following no later than 10 judicial days before a trial to the court and no later than the pretrial hearing where the case will be tried to a jury:

(a) The names and addresses of all persons the Nation intends to call as witnesses and a copy of all written or recorded statements of such persons known and the substance of all oral statements.

- (b) All written, recorded or oral statements made by the defendant and the names of all persons known by the Nation who heard such statements.
- (c) The names of all persons known by the Nation who have information concerning the alleged offense/s, the nature of the information and whether the Nation intends to call them as witnesses.
- (d) Any books, papers documents, photographs or other tangible objects the Nation intends to use at trial.
- (e) Any information or material known to the Nation which might tend to exculpate the defendant.
- (f) The names and addresses of any expert witnesses the Nation intends to call at trial with a summary of their testimony and qualifications.
- (g) Any and all reports made by the agents of the Nation pertaining to the investigation of the case, including but not limited to all police reports.
- (h) Any prior criminal convictions known to the prosecuting attorney of the defendant.

30A.14.020

Defendant's Obligations

Except as otherwise provided as to matters not

subject to disclosure and protective orders, the defendant shall disclose to the prosecuting attorney the following no later than 10 judicial days before a trial to the bench and no later than the pretrial hearing in a jury trial:

- (a) The names and addressees of any persons the defendant intends to call and a copy of all written or recorded statement of such persons and the substance of any oral statements.
- (b) Whether there is any claim of incompetency.
- (c) Whether there is any claim of insanity.
- (d) Whether there is any claim of alibi.

30A.14.030

Continuing Duty to Disclose

If a party discovers additional material subject to disclosure under this rule it shall immediately notify the other party or their counsel and the court of the existence of the material. Upon request of any person, the Court may permit any showing of cause for denial or regulation of disclosure, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following an in camera hearing, the entire record shall be sealed and preserved to be made available to the Appellate Court in the event of an appeal.

30A.14.040

Sanctions

If a party fails to comply with these discovery rules the Court may grant a continuance, exclude the evidence not disclosed, or impose whatever sanctions the Court deems appropriate.

30A.15

Suppression Hearings

30A.15.010

Suppression of Evidence

The Court may, but is not required to, exclude oral, physical or identification evidence from admission at trial if the Court finds that the evidence was discovered in violation of a defendant's rights under the Indian Civil Rights Act, these rules or any other provision of the this Code. If a party moves for suppression of any evidence the Court shall hold a hearing to determine the admissibility of that evidence. At the conclusion of the hearing the Court shall set forth its findings and its reason for the admissibility or inadmissibility of the evidence.

30A.15.020

Statements of the Accused

When a statement of the accused is to be offered as evidence the Court shall hold a hearing, at the request of a party, for the purpose of determining whether the statement is admissible. Such hearing may be held prior to or during the trial.

- (a) The Court shall inform the defendant that he may, but need not testify at the hearing.

- (b) If the accused does testify he or she will be subject to cross-examination concerning the circumstance surrounding the statements and credibility.
- (c) If the accused does testify at the hearing he or she does not waive their right to remain silent during the trial and the fact that the accused testified at the hearing and his testimony will not be mentioned to the jury.
- (d) If the accused does testify at trial about the statement he or she can be cross-examined with respect to the testimony at the suppression hearing.
- (e) If the Court rules that statements made by the accused are admissible at trial the accused shall be entitled to instruct the jury that they may give such weight and credibility to the statement as they see fit.

30A.16.

Trial By Jury or By the Court

30A.16.010

Right to a Jury

All criminal cases shall be tried to a jury unless the defendant knowingly, intelligently and voluntarily waives the right to a jury in open court and has the consent of the Court. The Court may require the defendant to inform the Court of his or her decision to waive a jury 10 judicial

days before the scheduled trial date. If the defendant fails to assert his or her right to a jury 10 judicial days before trial it will be deemed a waiver and the case will be tried to the judge.

30A.16.020 Number of Jurors

The number of persons serving on a jury shall be 6, not including alternates.

30A.16.030 Composition of Jurors

The jury shall be composed from a list of residents of the Quinault Indian Reservation as certified to the Chief Judge by the Quinault Business Committee. Such list shall be published and made available to the parties to a case and the public. The list shall be revised from time to time by the Quinault Business Committee.

30A.16.040 Selection of Jury

(a) The Clerk of the Court shall prepare separate ballots containing the names for the jurors summoned who have not been excused by the court and deposit the ballots in a box. The clerk shall then draw at random 6 names for the purpose of voir dire examination. Any additions to the panel shall be drawn using the same procedure until a jury has been selected.

(b). Failure to impanel a jury for any reason will constitute good cause to extend the trial date. An extension under this provision shall be for no more than 10 judicial days.

30A.16.050

Voir Dire

A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of preemptory challenges. The Court may permit the defendant or the defendant's attorney and the prosecuting attorney to conduct the examination or the Court may itself conduct the examination. If the Court conducts the examination it shall permit the defendant or the defendant's attorney and the prosecuting attorney to submit additional supplemental questions as it deems proper.

30A.16.060

Disqualification

A juror shall be deemed incompetent due to a mental or physical defect or ailment that render the juror incapable of performing the duties of a juror.

30A.16.070

Challenges

Either party to a case may challenge not more than two (2) jurors without cause and any number for cause which shall consist of, but is not limited to:

- (a) Having been a juror, party or witness in any civil or criminal case involving the same facts and parties.
- (b) Having a close family, business or legal relationship with the defendant, defense attorney, prosecuting attorney or any law enforcement officer called as a witness against the defendant.
- (c) Having an opinion on the guilt or innocence of the defendant as would impair impartiality.

30A.16.080

Jurors' Oath

When a jury has been seated, the juror's oath shall be administered by the judge or the Clerk.

30A.16.090

Duties

The Court may order the jury to view the premises where the offense or other material facts occurred. The Court may allow jurors to take notes regarding the evidence. The Court may order the discharge of a juror who becomes sick or otherwise unable to perform the duties of a juror and substitute the alternate juror. In the absence of an alternate and the failure of the parties to stipulate to continue the trial with five or less jurors, the jury shall be discharged and a new jury shall be selected, within 10 judicial days, to hear the case.

30A.16.100

Verdict

- (a) A verdict of guilt must be unanimous. If after the Court determines that the jury is unable to reach a unanimous verdict the Court shall declare a mistrial or may dismiss the case.
- (b) A defendant may be found guilty of an offense necessarily included in the offense charged.

30A.16.110

Bench Trial

In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific written findings of fact and conclusions of law.

30A.17.010

Trial Procedures

The following procedures shall govern a criminal trial:

- (a) The trial shall be electronically recorded by the clerk of the court;
- (b) The prosecutor and the defendant or defendant's counsel shall be allowed to make an opening statement;
- (c) Each party shall be entitled to present admissible evidence and shall be entitled to cross-examine any witnesses called by the other party;
- (d) The testimony of witnesses shall be taken in

- open court but upon motion by any party and for good cause a witnesses may be sequestered;
- (e) Physical evidence shall be introduced and admitted only after a proper foundation has been laid under the rules of evidence;
- (f) The Court on its own motion or on a motion by the defendant shall enter a judgment for acquittal at the close of the evidence offered by the prosecution if the evidence, taken in the light most favorable to the prosecution, is insufficient prove that the defendant is guilty beyond a reasonable doubt;
- (g) The parties may offer rebutting evidence only, except that the Court may in the interest of justice permit the introduction of other evidence;
- (h) The parties may offer argument, the prosecution having the right to open and close;
- (i) Each party has the right to have the jury instructed, in writing, so that they can argue their theory of the case;
- (j) The judge shall charge the jury orally and in writing stating the law applicable to the case. At any time during the trial the judge may instruct the jury as to the law. In

in addition to any other lawful instructions requested by either party the judge shall instruct the jury that the defendant is presumed to be innocent, that if the defendant did not testify, his silence cannot be considered as evidence of guilt, that the prosecution must prove beyond a reasonable doubt all of the elements of the offense and that the verdict of the jury must be unanimous;

(k) The parties may offer supplemental jury instructions at any time before the jury retires to deliberate and objections to any instruction not made before the jury retires to deliberate shall be deemed waived.

30A.18

Post Trial

30A.18.010

Directed Verdict

At any time after the close of the evidence, the Court may direct a verdict of acquittal. After the charge the jury shall retire to determine a verdict. The jury must render a verdict of guilty, not guilty or unable to agree on every allegation in the complaint. When a verdict is returned and before recorded the jury shall be polled at the request of the Court or any party. After the verdict of the jury has been announced to the

judge, the jury shall be discharged.

30A.18.020

Acquittal

If the Court finds for the defendant or the jury brings back a verdict of not guilty a judgment of acquittal shall be entered and the defendant shall be immediately discharged.

30A.18.030

Unable to Agree

If the jury is unable to unanimously agree on a verdict of guilty or not guilty, the Court shall declare a mistrial and discharge the jury. If the Court declares a mistrial due to the failure of the jury to agree on a verdict, the prosecution may refile the complaint. The complaint must be refiled within 20 judicial days and trial must held within 90 judicial days of the announcement of mistrial.

30A.18.040

New Trial

A motion by the defendant for a new trial must be filed within 10 judicial days after the verdict or decision. The court may extend the time for filing a new trial motion if good cause is shown as to why the motion was not timely filed. The Court shall grant the defendant's motion if the Court finds any of the following denied the defendant a fair trial:

- (a) The jury received evidence not authorized or admitted by the court;

- (b) The verdict was determined by lot, through intimidation or without a fair expression of opinion;
- (c) The jury was improperly instructed on the law;
- (d) There is newly discovered evidence which was not available or which could not have been discovered at the time of trial;
- (e) Unintentional misconduct by the prosecutor, police or jury;
- (f) The defendant did not receive a fair or impartial trial;
- (g) The verdict was contrary to law or the evidence;
- (h) An order or ruling of the Court prevented the defendant from having a fair trial.

30A.18.050

Arrest of Judgment

The Court shall at any time relieve a party from a final judgment and dismiss the case for any of the following reasons:

- (a) Lack of jurisdiction over the part the crime;
- (b) Fraud in obtaining the judgment;
- (c) The judgment is void;
- (d) Intentional misconduct by the prosecutor, police or jury which denied the defendant the right to a fair trial;
- (e) Insufficiency of proof of a material element

- of the crime;
- (f) The complaint fails to charge a crime;
- (g) Any other reason justifying relief from the judgment.

30A.19.010 Dismissal

The Court may on its own motion in the furtherance of justice dismiss any criminal prosecution and must set forth its reasons in a written order.

30A.20 Conviction and Sentence

30A.20.010 Time of Sentence and Contents of Judgment

Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct, the judge shall sentence the defendant and enter a judgment. The judgment shall be filed by the Clerk and state the charge, plea or verdict and the sentence.

30A.20.020 Sentence

The Court shall state the precise terms of the sentence. The Court shall also advise the defendant of his or her right to file an appeal and that the appeal must be filed within 20 judicial days from the date of sentencing. If the defendant is sentenced to custody he or she shall be given full credit for any time spent in confinement in connection with the offense.

- (a) Any confinement may include:

- (1) Serving of a sentence on weekends;
 - (2) Community service in lieu of confinement;
 - (3) Work release.
- (b) The Court may suspend or defer any sentence upon such or conditions that are reasonable and release the defendant on probation. In granting probation the Court shall consider such factors as the defendant's prior criminal history, background, financial circumstances, family obligations and other relevant circumstances. The Court shall specify the term of the probation.
- (c) The Court may order probation up to one year in addition to any confinement.
- (d) The Court may defer prosecution of a case for up to two years and upon reasonable conditions. A deferred prosecution shall terminate two years from the date of the order deferring prosecution unless the deferred prosecution is revoked prior to that date. If a deferred prosecution is revoked, the case will be set for trial no later than 90 judicial days following the revocation.
- (d) The Court may order the defendant to pay restitution to the victims or victims of the crime. Restitution shall be in an amount

easily ascertainable, for damage or injury related to the crime and proven by a preponderance of the evidence. No person shall be confined solely because of their inability to pay ordered restitution.

30A.20.030

Fines

When a defendant is sentenced to pay a fine, the Court may permit the fine to be paid within a definite period or by installments. Fines shall be paid to the Clerk. No person shall be confined solely because of their inability to pay a fine.

30A.21.010

Violation of Probation

If any person shall willfully violate probation he or she may have their probation revoked and be required to serve his original sentence. The Court may also impose an additional 60 days confinement for violation of probation. The Court shall not revoke probation except after a hearing at which the defendant shall be present and advised of the grounds on which such action is proposed. The defendant may be admitted to bail pending the hearing.

30A.22.010

Repeal

Title 10 is repealed and replaced by this Title. A reference in any other provision of this Code to a specific section of former Title 10 shall mean a

reference to a specific section of this Title that addresses the referenced matter.



Quinault Indian Nation

POST OFFICE BOX 180 □ TAHOLAH, WASHINGTON 98567 □ TELEPHONE (206) 276-8211

RESOLUTION NO. 92-48-70 QUINAULT BUSINESS COMMITTEE

WHEREAS, the Quinault Business Committee is the governing body of the Quinault Indian Nation and;

WHEREAS, the Quinault Business Committee is charged with the duty of protecting the health, welfare and safety of the People of the Quinault Indian Reservation and;

WHEREAS, the Quinault Business Committee is also charged under Article V Section 3 the Constitution of the Quinault Indian Nation to establish a Tribal Court and provide for its procedures and;

WHEREAS, Titles 10, 15 and 30 of the Quinault Tribal Code currently set forth the rules of Criminal Procedure, Civil Procedure and Rules of the Court respectfully and;

WHEREAS, Titles 10, 15 and 30 of the Quinault Tribal Code no longer adequately address the procedures and rules necessary to provide for the orderly administration of justice in the Quinault Tribal Court and;

WHEREAS, it is confusing to litigants when the Tribal Court rules and procedure are contained in separate sections of the Quinault Tribal Code and;

WHEREAS, it is possible to amend or replace those Titles to provide for the orderly administration of justice and to place those Titles in one Section of the Tribal Code and;

WHEREAS, Title 30 has been amended and Titles 10 and 15 have been and replaced by Titles 30A and 30B respectively to effectuate the orderly administration of justice and to allow the Tribal Court rules and procedures to be located sequentially in the Quinault Tribal Code and;

WHEREAS, public hearings were held in Queets and Taholah on July 20, 1992, and comments were taken on amended Title 30 and new Titles 30A and 30B;

NOW, THEREFORE, BE IT RESOLVED that Title 30 as amended and new Titles 30A and 30B are enacted into law and shall be placed sequentially in the Quinault Tribal code and;

BE IT FURTHER RESOLVED, that Titles 10 and 15 are hereby repealed and replaced with Titles 30A and 30B respectively as of August 31,

1992, and:

BE IT FURTHER RESOLVED, that amended title 30 and Titles 30A and 30B shall govern all cases filed in the Quinault Tribal Court after August 31, 1992.

Joseph DeLaCruz
Joseph DeLaCruz, Chairman
Quinault Business Committee

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the Business Committee at Taholah, Washington, on the 27th day of July 1992, at which time a quorum was present by a vote of 7 FOR, 0 AGAINST and 0 ABSTAIN.

Margie Valdillez
Margie Valdillez, Secretary
Quinault Business Committee

**QUINAULT TRIBAL CODE
TITLE 18
PUBLIC NUISANCE CODE**

18.01 General Provisions

18.01.010 Short Title

This Title shall be known as the Quinault Indian Nation Public Nuisance Code.

18.01.020 Purpose

The purpose of this Title is to protect the fish, wildlife, and other natural resources, the safe and orderly habitation and development of the lands under the jurisdiction of the Quinault Indian Nation, and the beauty of the Quinault Indian Reservation by providing guidelines for regulating the use and enjoyment of the lands of the Quinault Indian Reservation and by providing criminal and civil sanctions for violations of this Title and the regulations promulgated under this Title.

It is the further purpose of this Title to preserve, protect and improve the air resources of the Quinault Indian Nation so as to promote health, safety and welfare, prevent injury to human, plant and animal life and property, foster the comfort and convenience of its residents and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the Reservation.

18.01.030 Scope and Applicability

This Title shall apply to all lands, whether held in fee or trust, within the exterior boundaries of the Quinault Indian Reservation held by an private owner or owners; and to all acts or omissions by private individuals while within the exterior boundaries of the Quinault Indian Reservation; and to such acts or omissions by private individuals that occur outside the exterior boundaries of the Quinault Indian Reservation that have an effect on the lands within the exterior boundaries of the Quinault Indian Reservation.

18.01.040 Definitions

The following words, terms and phrases, when used in this Title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. **Abandoned**, means a structure that has been vacant for a period in excess of twelve (12) months or any period less than twelve (12) months when a vacant structure or portion thereof constitutes an attractive nuisance or hazard to the public as determined by the Building Official;

2. **Abate** means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a violation of this Title by such means and in such a

manner and to such an extent as the Director or his or her designee determines is necessary in the interest of the general health, safety and welfare of the community;

3. Alley means a public way, paved or unpaved, which is intended to provide or which provides a roadway for vehicular and pedestrian access to abutting properties and is generally located to the rear or side of those properties, but not including such a public way in its natural and undeveloped state which cannot be used by vehicles;

4. Attractive nuisance means any condition, structure, instrument, or machine that is unsafe, unprotected, and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or, any lumber, trash, fences, debris, or vegetation that may prove hazardous or dangerous to minors.

5. Building materials means and includes lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials;

6. Department shall mean the Quinault Indian Nation Department of Public Safety.;

7. Emergency work means machinery and work necessary to restore property to a safe condition following a public calamity, or machinery and work required to protect persons or property from an imminent exposure to danger;

8. Enforcement officer shall mean any sworn member of the Department of Public Safety, any sworn Quinault Indian Nation Building Inspector, and the Quinault Indian Nation Sanitation Officer;

9. Fire hazard means vegetation which is dry and combustible, including but not limited to weeds, grass or clippings, dead bushes or trees or their parts, and other combustible vegetative materials;

10. Garbage is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food;

11. Graffiti means the unauthorized application of paint, ink, chalk, dye or the use of any other instrument capable of defacing, damaging, or destroying public and private buildings, structures, or any portion thereof;

12. Handbill is any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise

reproduced original or copies of any matter of literature, not otherwise a newspaper;

13. Health hazard means vegetation or refuse providing a harborage for rats or other rodents (excluding chipmunks and squirrels), rodent runs and habitats; vegetation which is poisonous or noxious, including but not limited to poison ivy, poison oak, poison hemlock, poison sumac and nightshade; vegetation which creates a danger of contamination or disease; and vegetation which is infested with caterpillars or other horticultural pests;

14. Invasive Weed and/or Vegetation shall mean a plant that is 1) non-native (or alien) to the ecosystem under consideration and 2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

15. Junk vehicle means a vehicle meeting at least three (3) of the following requirements:

- a. Is three (3) years old or older;
- b. Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor or transmission;
- c. Is apparently inoperable;
- d. Has an approximate fair market value equal only to the approximate value of the scrap in it;
- e. Has not moved within the prior thirty (30) days;

16. Litter is "garbage," "refuse," and "rubbish" as these terms are defined in this section and all other solid and liquid waste material which, if thrown or deposited as prohibited in this Title tends to create a danger to public health, safety and welfare;

17. Newspaper means any newspaper of general circulation, a newspaper duly entered with the post office of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law. In addition, the term "newspaper" shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year, and sold to the public;

18. Noise means the intensity, duration and character of sounds, from any and all sources;

19. Noxious weed and/or vegetation shall mean any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices;
20. Occupant means any person occupying or having possession of property or any portion thereof;
21. Owner means any person who, alone or with others, has title or interest in property, in trust or in fee, with or without accompanying actual possession thereof, and including any person who as agent, or as executor, administrator, trustee or guardian of an estate, has charge, care or control of any property;
22. Park means a park, reservation, playground, beach, recreation center or any other public area in the Reservation boundaries, owned or used by the Quinault Indian Nation and devoted to active or passive recreation;
23. Permitted Facility means a facility that has a valid permit issued by Quinault Indian Nation Department of Natural Resources or its designee that authorized burning for a particular purpose;
24. Person means any individual firm, association, partnership, corporation or any other entity, public or private;
25. Planting strip means that part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk;
26. Premises means any building, lot, parcel, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks, public rights-of-way, and parking strips and any lake, river, stream, drainage way or wetland;
27. Public place means any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings;
28. Refuse means all putrescible and nonputrescible solid and liquid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, solid market and industrial wastes, and any other material, regardless of its market value, which, by reasons of its location or character, is unsightly or interferes with the reasonable use and enjoyment of adjacent properties, of which has detrimental effects upon the adjacent property values, or which would hamper or interfere with the containment of fire upon the premises;
29. Rubbish means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials;

30. Safety hazard means vegetation which creates a defective condition on any street, sidewalk, or alley or vegetation which overhangs the street, sidewalk, or alley in such a way as to impede the free and full use of the street, sidewalk, or alley, and vegetation which obstructs the vision of drivers such that traffic regulation signs or the view of oncoming traffic is obstructed at a distance of fifteen (15) feet or closer from the edge of the pavement or curb, and vegetation which creates injury to or the opportunity or risk for injury to passersby or the general public;

31. Sidewalk means that property between the curb lines or the lateral lines of a street and the adjacent property, set aside and intended for the use of pedestrians;

32. Store means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location;

33. Street means any highway, avenue, lane, road, street, drive, place, boulevard, alley, right-of-way, and every way or place in the Quinault Indian Reservation boundaries open as a matter of right to public vehicular travel;

34. Vegetation means trees, shrubs, grass, weeds, bushes, vines, and other plant materials, including but not limited to clippings, fallen leaves, fruit or branches;

35. Vehicle is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway or waterway, including devices used exclusively upon stationary rails or tracks and to also include boats, vessels, and canoes.

18.01.050 Public Nuisances Unlawful

It is unlawful for any person to permit, create, maintain, or allow, upon any premises, any of the acts or things declared by this Title, or any Title in the Quinault Tribal Code, as a public nuisance.

18.01.060 Punishment of Public Nuisances

All public nuisances shall be punished according to Q.T.C. 18.10.010 et. seq.

18.01.070 Types of Nuisances.

Each of the following conditions, unless otherwise permitted by law, is specifically declared to constitute a public nuisance, and whenever an enforcement officer determines that any of these conditions exist upon any premises, the enforcement officer may issue a Notice of Voluntary Correction or Notice of Violation:

1. Litter Nuisance, as defined in QTC 18.02.010;
2. Noise Nuisance, as defined in QTC 18.03.010;
3. Natural Hazard Nuisance, as defined in QTC 18.04.010;

4. Graffiti Nuisance, as defined in QTC 18.05.010;
5. Rodent Nuisance, as defined in QTC 18.06.010;
6. Junk Vehicle Nuisance, as defined in QTC. 18.07.010;
7. Dangerous and Nuisance Buildings, as defined in QTC 18.08.010; and/or
8. Pollution Nuisances, as defined in QTC 18.09.010.

18.01.080

Authorized act not a public nuisance.

No act which is done or maintained under the express authority of a statute, code provision, resolution or written permission by the Quinault Indian Nation Business Committee can be deemed a public nuisance.

18.02 Litter Control- Litter Nuisances

18.02.010 Litter Nuisance Unlawful

It is unlawful, and hereby declared a public nuisance, for any person to commit an act or omission constituting a Litter Nuisance. The following conditions are hereby declared Litter Nuisances when committed within the exterior boundaries of the Quinalt Indian Reservation:

1. Throwing or depositing litter in or upon any street, sidewalk or other public place within the Reservation boundaries except in public receptacles, or in authorized private receptacles for collection;
2. Throwing or depositing litter in any park within the Reservation boundaries except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place;
3. Throwing or depositing litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the Reservation boundaries;
4. Driving or moving any truck or other vehicle within the Reservation boundaries unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place;
5. Sweeping into or depositing in any gutter, street or other public place within the Reservation boundaries the accumulation of litter from any building or lot or from any public or private sidewalk or driveway;
6. Failing to keep the sidewalk in front of a property owner's or leaseholder's premises free of litter;
7. Throwing or depositing litter on any occupied private property within the Reservation boundaries, whether owned by such person or not;
8. Throwing or depositing litter on any open or vacant private property within the Reservation boundaries, whether owned by such person or not;
9. Failing to maintain a property owner's or leaseholder's premises free of litter;
10. Posting or affixing any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law;
11. Throwing or depositing any handbill in or upon any vehicle;

12. Throwing or depositing any handbill in or upon any private premises;
13. Permitting the existence of any trash, dirt, filth, the carcass of any animal, manure or rubbish, accumulation of yard trimmings, excluding properly maintained yard compost, or other matter which is offensive to a reasonable person;
14. Erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any premises, which may be viewed or smelled from without the premises, or in or upon any street, alley, sidewalk, park, parkway or other public or private place in the Reservation boundaries, any one (1) or more of the following disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions or things:
- a. Any putrid, unhealthy or unwholesome bones, meat, hides, skins, the whole or any part of any dead animal, fish or fowl, or waste parts of fish, vegetable or animal matter in any quantity; but nothing herein shall prevent the temporary retention of waste in approved covered receptacles; or
 - b. Any privies, vaults, cesspools, open containers of stagnant water, sumps, pits or like places which are not securely protected from flies and rats, or which are malodorous; or
 - c. An accumulation of material including, but not limited to bottles, cans, glass, plastic, ashes, scrap metal, wire bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, packing hay, straw or other packing material or building materials on any premises which not properly stored or neatly piled or is offensive to a reasonable person or in which flies or rats may breed or multiply; or
 - d. Accumulation of any litter, garbage, trash, refuse and/or rubbish; or
 - e. The keeping, using or maintaining of any pen, stable, lot, place or premises in which any hog, cattle or fowl may be confined or kept in such a manner as to be nauseous, foul or offensive;
15. Permitting the existence of any fence or other structure on private property abutting or fronting upon any public street, sidewalk or place which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition;
16. Permitting the existence of wrecked or disassembled trailers, house trailers, boats, tractors or other vehicle, appliance or machinery of any kind, or any major parts thereof;
17. Permitting the existence on any premises of any abandoned or unused well, pit, shaft, cistern or storage tank without first demolishing or removing from the

premises such storage tank, or securely closing and barring any entrance or trapdoor thereto or without filling any well, pit, shaft or cistern or capping the same with sufficient security to prevent access thereto;

18. Permitting the existence in a place accessible to children of any attractive nuisance dangerous to children, including but not limited to any abandoned, broken or neglected equipment, machinery, refrigerator, freezer, or other large appliance;

19. Permitting or allowing a property owner's or leaseholder's property to fall into a condition that contains dense smoke, noxious fumes, gas and soot, or cinders, in unreasonable quantities;

20. Permitting or allowing a property owner's or leaseholder's trees, hedges, billboards, fences or other obstructions which prevent others from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a legal speed to a full stop before the intersection is reached;

21. Keeping or harboring any poisonous or harmful substance which is reasonably accessible to persons or to animals;

22. Permitting or allowing a property owner's or leaseholder's building or unit within a building to be used for the purpose of unlawfully manufacturing, delivering, selling, storing or giving away any controlled substance as defined in Q.T.C. Title 12 or as thereafter amended, and every building or unit within a building wherein or upon which such acts take place.

18.02.020,

Duty of Occupants and Owners

It is the duty of the occupant and owner of property wherein or whereon any Litter Nuisance exists to abate the nuisance by removing, disposing, cleaning, or otherwise ridding the property of such litter nuisance which otherwise constitutes a menace to the public peace and morals.

18.03 Noise Control-Noise Nuisance

18.03.010 Noise Nuisances Unlawful

It is unlawful, and hereby declared a public nuisance, to permit, create, cause or allow any act or omission constituting a noise nuisance. The following conditions are hereby declared Noise Nuisances when committed within the exterior boundaries of the Quinault Indian Reservation:

1. During the hours of 9:00 p.m. (PST) and 6:00 a.m. (PST), to permit, create, cause or allow sound which can be heard at a distance of fifty (50) feet from the source where the sound emanates.

18.03.020 Exceptions

The following noises shall not be deemed Noise Nuisances:

1. Sounds originating from a source that received prior written permission by the Quinault Indian Nation or are sanctioned by the Business Committee;
2. Sounds originating from public utility personnel or equipment or public safety personnel or equipment;
3. Sounds originating from a source which sounds are temporary in nature and are not repeated within a one-hour period;
4. Sounds originating from the performance of emergency work;
5. Sounds originating from personnel or equipment which are engaged in commonly accepted agricultural, forestry, manufacturing, processing, or assembly practices;
6. Sounds originating from electrical substations and existing, stationary equipment used in the conveyance of water by a utility;
7. Sounds originating from the normal operation of motor vehicles upon a public right-of-way.
8. Sounds originating by warning devices not operating continuously for more than five (5) minutes, or bells, chimes, and carillons; or
9. Sounds originating from natural phenomena and unamplified human voices.

18.03.030

Duty of Occupants and Owners

It is the duty of the occupant and owner of property wherein or whereon any Noise Nuisance exists to abate the nuisance by halting, stopping, quieting, or otherwise ridding the property of such noise nuisance which otherwise constitutes a menace to the public peace and morals.

18.04 Weeds and Vegetation- Natural Hazard Nuisance

18.04.010 Natural Hazard Nuisances Unlawful.

It is unlawful, and hereby declared a public nuisance, for any person to permit, maintain, cause, or allow an act or omission constituting a Natural Hazard Nuisance. The following conditions are hereby declared Natural Hazard Nuisances when committed within the exterior boundaries of the Quinalt Indian Reservation:

1. Failing to destroy, remove or trim vegetation or parts thereof on the property, and which are also overhanging any public place at a distance of less than eight (8) feet measured vertically from any point in or on an abutting sidewalk next to a property owner's or leaseholder's home;
2. Failing to destroy, remove or trim vegetation or any parts thereof on the property or on adjacent planting strips, which encroaches on or overhangs the traveled portion of the street or alley within sixteen and one-half (16.5) feet measured vertically from any point on the street or alley that abuts a property owner's or leaseholder's home;
3. Failing to remove all grass and weeds attaining a height of six (6) inches, except on property zoned agricultural, and all shrubs, bushes, trees or vegetation growing or which have grown and died which are a fire hazard or are infested with caterpillars or other horticultural pests, or which otherwise constitute a menace to the public health, safety or welfare;
- 4.⁹ Allowing, permitting, causing, or keeping any other vegetation⁹ constituting a fire hazard after receiving notice that such vegetation creates a fire hazard;
5. Allowing, permitting, causing, or keeping any other vegetation constituting a health hazard after receiving notice that such vegetation creates a health hazard; and/or
6. Allowing, permitting, causing, or keeping any other vegetation constituting a safety hazard after receiving notice that such vegetation creates a safety hazard.

18.04.020 Exemptions.

Areas protected by Tribal or Federal law; or areas protected by resolution of the Business Committee are exempt from the application of this Title.

18.04.030 Duties of occupants and owners.

It is the duty of the owner of property and of any occupant of the property wherein or whereon any Natural Hazard Nuisance exists to abate the nuisance by

destroying, removing or trimming vegetation, removing or destroying any health, safety or fire hazard or by otherwise eradicating the Natural Hazard Nuisance.

18.04.040 Invasive and Noxious Weed Control Assistance

Any person residing upon or owning property within the exterior boundaries of the Quinalt Indian Reservation wherein a natural hazard nuisance exists which is caused by an invasive or noxious weed and/or vegetation shall contact the Quinalt Department of Natural Resources for eradication of said nuisance when the nuisance cannot reasonably be contained or eradicated by a homeowner or occupant.

18.05 Graffiti Control-Graffiti Nuisances

18.05.010 Graffiti Nuisances Unlawful.

It is unlawful, and hereby declared a public nuisance, for any person to permit, maintain, cause, or allow a Graffiti Nuisance. The following conditions are hereby declared Graffiti Nuisances when committed within the exterior boundaries of the Quinault Indian Reservation:

1. To place graffiti or other writing upon any publicly or privately owned permanent structure located on publicly or privately owned real or personal property within the exterior boundaries of the Quinault Indian Reservation.
2. To own or otherwise have control of any real or personal property within the exterior boundaries of the Quinault Indian Reservation and to permit or allow any graffiti to be placed upon or remain on any permanent structure located on such property when the graffiti is visible from the street or other public or private property.

18.05.020 Duties of Occupants and Owners

It is the duty of the owner and occupant of property wherein or whereon any Graffiti Nuisance exists to abate the nuisance by removing, cleaning, painting, or otherwise ridding the property of such graffiti nuisance which otherwise constitutes a menace to the public peace and morals.

18.05.030 Defense

An occupant or owner shall be relieved of the duty in 18.05.020 if the owner or occupier has abated such Graffiti Nuisance three (3) times in the past twelve (12) months. No owner or occupant shall be liable or sanctioned for such Graffiti Nuisances if within the same time period.

18.06 Rodent Control – Rodent Nuisance

18.06.010 Rodent Nuisances Unlawful.

It is unlawful, and hereby declared a public nuisance, for any person to permit, maintain, cause, or allow an act or omission constituting a Rodent Nuisance. The following conditions are hereby declared Rodent Nuisances when committed within the exterior boundaries of the Quinault Indian Reservation:

1. For the owner or occupant of any premises to fail to reconstruct or repair such premises, including residences, for the purpose of preventing rats, mice or other rodents from gaining entrance thereto after receiving a Notice of Voluntary Correction pertaining to the presence of rats, mice, or other rodents on or in the premises or residence.

2. For the owner or occupant of any premises to fail to apply such reasonable measures for the eradication of rats, mice, or other rodents on or in the premises, after receiving Notice of Voluntary Correction pertaining to the existence of rats, mice, or other rodents on or in the premises.

18.06.020 Defense

An occupant or owner shall be relieved of liability outlined in 18.06.010 if the owner or occupant has applied reasonable measures to prevent rats, mice, or other rodents from gaining entry into or on the premises and has applied reasonable measures for the eradication of rats, mice, or other rodents on or in the premises within the past twelve (12) months, and by the fault of another party, the Rodent Nuisance continues, reappears, or otherwise is maintained.

18.07 Junk Vehicles- Junk Vehicle Nuisances

18.07.010 Junk Vehicle Nuisances Unlawful.

It is unlawful, and hereby declared a Public Nuisance, for any person to permit, maintain, cause, or allow an act or omission constituting a junk vehicle nuisance. The following are hereby declared Junk Vehicle Nuisances within the exterior boundaries of the Quinault Indian Reservation:

1. to store, deposit, cause or permit to be stored or deposited an abandoned, wrecked, dismantled, or inoperative vehicle or an automobile hulk or parts thereof upon any private property within the exterior boundaries of the Quinault Indian Reservation, except when the vehicle or part thereof is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or when the vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed dealer or

2. to store, deposit, cause or permit to be stored or deposited a junk vehicle as defined by QTC 18.01.030.

18.07.020 Duties of Owners and Occupants.

It is the duty of the owner and occupant of property wherein or whereon any Junk Vehicle Nuisance exists to abate the nuisance by removing or otherwise causing such vehicle to no longer be a "junk vehicle" or, if the vehicle was abandoned by another party, to contact the Police Department and report an abandoned vehicle.

18.07.030 Defense

An occupant or owner shall be relieved of the duty in 18.07.020 if the owner or occupant is not the legal or registered owner of the vehicle constituting the Junk Vehicle Nuisance and the owner or occupant has contacted the police department and reported an abandoned vehicle within the preceding sixty (60) days.

18.08 Dangerous and Nuisance Buildings

18.08.010 Dangerous and Nuisance Buildings Unlawful

It is unlawful, and hereby declared a Public Nuisance, for any person to permit, maintain, cause, or allow an act or omission constituting a dangerous or nuisance building. The following are hereby declared Dangerous or Nuisance Buildings within the exterior boundaries of the Quinault Indian Reservation:

1. a building, structure, or dwelling unit, or any portion thereof, that has been damaged by fire, natural processes (wind, flood, earthquake) or other cause so the structural stability is less than minimum requirements of the Building Code requirements applicable in the Nation's titles or regulations, as determined by the Nation's Building Inspector.
2. a building, structure, or dwelling unit that does not have a sewage disposal system approved by the Nation or potable water supply, or that is not meeting the Nation's sewage requirements as determined by the Sanitation Officer.
3. a building, structure, or dwelling unit that is determined by the Fire Marshal to be a fire hazard.
4. a building, structure, or dwelling unit that is abandoned, unsanitary, unfit for human habitation or in such a condition as to make it immediately dangerous to life, limb, property or safety of the public or its occupants, or is an attractive nuisance.

18.08.020 Duty of Occupants and Owners

It is the duty of the occupant and owner of property on the Reservation to maintain property and premises in a manner consistent with the provisions of this Title.

18.09 Pollution Nuisance

18.09.010 Pollution Unlawful

It is unlawful, and hereby declared a public nuisance, for any person to permit, maintain, cause, or allow an act or omission constituting a Pollution Nuisance. The following conditions are hereby declared Pollution Nuisances when committed within the exterior boundaries of the Quinault Indian Reservation:

- 1. To emit or to allow the emission or escape of smoke, soot, noxious acids, fumes, dust, or particulate matter within the Quinault Indian Reservation in such quantities as to annoy, discomfort, injure or inconvenience the health of any person, or threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces, smokehouses, or other permitted facilities;**
- 2. To alter or allow the alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters, or such discharge into any surface or underground body of water as will, or is likely to, render such waters harmful; detrimental or injurious to: (1) the public health, safety, or welfare; (2) domestic, commercial industrial, recreational, aesthetic, ceremonial, or other legitimate purposes; and/or (3) livestock, domestic animals, wild animals, birds, fish, wetland plant species, or other aquatic life and**
- 3. To discharge waste, rubbish, sewage, garbage, trash, or other harmful or unsightly substances into any waters, including surface water or ground water, or onto any lands.**

18.10 Violations, Penalties, and Enforcement

18.10.010 General Authority to Enforce.

It shall be the duty of the Department of Public Safety to enforce this Title. The Public Safety Administrator ("Administrator") may call upon the fire, health or other appropriate Quinault Indian Nation personnel or members of the Department of Public Safety to assist in enforcement. The Administrator shall adopt such rules or regulations as are necessary for the administration of this Title.

Failure to enforce this Title does not authorize or waive any violation or any provision of this Title or any regulation adopted pursuant to this Title. The Quinault Nation Department of Resource Protection, the Sanitation Officer and the Quinault Building Inspector shall have specific authority to enforce provisions of this Title.

18.10.020 Right of Entry

1. Upon presentation of the proper credentials, the Administrator or any other authorized enforcement officer or employee or agent of the Nation, with the consent of the occupant, or with the consent of the owner of any unoccupied building, structure, property or portion thereof, or pursuant to a lawfully issued warrant, may enter at all reasonable times and in a reasonable manner, any building, structure, property or portion thereof to inspect the same whenever necessary to make an inspection to enforce or determine compliance with the provisions of this Title over which the Department has enforcement responsibility or has cause to believe that a violation of any provision of this Title is being committed.

2. If the building, structure, property or portion thereof is unoccupied, the enforcement officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property or portion thereof and request entry. If the enforcement officer is unable to locate the owner or such other persons and has reason to believe that conditions therein create an immediate and irreparable health hazard, then the enforcement officer shall make entry.

18.10.030 Notice of Voluntary Correction

Whenever an enforcement officer has reason to believe that a violation of this Title or regulations adopted pursuant to this Title has occurred, the enforcement officer may serve a written Notice of Voluntary Correction on the violator in the manner directed in this Section. In the event that the violator is unable, unwilling, or does not otherwise take corrective action as outlined in the Notice of Voluntary Correction, the enforcement officer shall issue a Notice of Violation.

18.10.040 Contents of Notice of Voluntary Correction

Unless provided otherwise by this Title, whenever the enforcement officer has reason to believe that a public nuisance has occurred, the enforcement officer may serve a written Notice of Voluntary Correction and order directed to the alleged violator in the manner directed in QTC 18.09.050.

The notice shall contain a brief and concise description of the alleged violation or alleged public nuisance, the provision of this Title alleged to have been violated, and the condition(s) relied upon creating a public nuisance. The Notice of Voluntary Correction shall state that continued or subsequent violation may result in further civil enforcement actions, as provided in this Title, to include monetary civil penalties. The order shall contain a statement of the corrective action required and shall specify a reasonable date and time within which the action must be accomplished.

18.10.050 Service of Notice of Voluntary Correction

The Notice shall be personally served on the alleged violator, if reasonably possible. If personal service is not reasonably possible, the notice shall be posted on the property where the alleged public nuisance exists and mailed by certified mail, postage prepaid, return receipt requested, to the person at his last known address or at the following place(s), whichever is most likely to inform the alleged violator of the Notice:

1. In the event the public nuisance is located on private property, to the last known landowner(s) or leaseholder of record with the Quinault Indian Nation, the Bureau of Indian Affairs, or the County Assessor;
2. In the event the public nuisance is a vehicle, to the last known registered and legal owner(s) of record of a vehicle;
3. If the enforcement officer witnesses or contacts the alleged violator of a public nuisance, to the alleged violator's address certification if different from above. The failure of any such person to receive actual notice of the Notice of Voluntary Correction shall not affect the validity of any proceedings taken under this Title. If the enforcement officer believes that the requirements of this Section are not being met, the enforcement officer may, in addition to the Notice of Voluntary Correction, seek a Stop Work Order from the Administrator.

18.10.060 Exceptions

1. The Administrator shall have the authority to grant an exception where practical difficulties, unnecessary hardships and results inconsistent with the general purposes of this Title might result from the strict application of its provisions.
2. The alleged violator or his or her agent may make application to the Administrator for an exception on forms provided by the Administrator.

3. Conditions for granting Exceptions.

Before an Exception may be granted, it shall be shown and the Administrator shall find:

- a. The Exception shall not constitute a grant of special privileges inconsistent with a limitation upon uses of other properties in the vicinity and zone in which the subject property is located;
- b. That such Exception is necessary, because of special circumstances relative to size, topography, location or surroundings of the subject property to provide it with the rights and privileges enjoyed by other property owners in the vicinity and in the zone in which the property is located; and
- c. That the granting of the Exception will not be materially detrimental to the comfort, repose, health or safety of the public.

18.10.070 Extension for Compliance

1. Upon good cause shown by the alleged violator, the Administrator shall have the power to grant an extension from the operation of this Title in order to allow the alleged violator to take corrective action as outlined in the Notice of Voluntary Correction not to exceed thirty (30) days. Such extension may be renewed for an additional like period at the discretion of the Administrator, but only if satisfactory progress toward compliance is shown.
2. Any person seeking an extension shall file an application with the Administrator on forms provided by the Administrator. Any such request for an extension must be received in the Administrator at least five (5) working days prior to the date set for compliance in the Notice of Voluntary Correction.
3. In granting or denying an extension of the date set for compliance, the Administrator shall file a written order, stating the facts and reasons leading to the decision, which is due no later than the date set for compliance in the Notice of Voluntary Correction.
4. A request for an Extension shall not in any manner preclude the alleged violator from seeking any other relief available under Tribal law.

18.10.080 Stop Work Order.

1. Whenever a continuing violation of this Title or any regulations adopted pursuant to this Title will: (a) materially impair the Department's ability to secure compliance; or (b) threaten the health or safety of the public; or (c) threaten or harm natural resources, the Administrator or Administrator's designee may issue a Stop Work Order specifying the violation and prohibiting any work or other activity at the site. The Order may be posted on the subject property or may be served in person on persons engaged in any work in violation of this Title. No

further work or activity shall proceed, unless and until authorized by the Administrator in writing or by way of a Court Order from the Quinault Tribal Court.

2. Failure to comply with a Stop Work Order shall constitute a separate violation of this Title and shall be punishable by a fine of not more than \$300.00 per day for each day the violator fails to abide by the Stop Work Order.

18.10.090 Notice of Violation

In the event that an alleged violator has failed to take corrective action according to a properly served Notice of Concern and the enforcement officer has reason to believe that a public nuisance has occurred, or when the enforcement officer believes that a violation can only be promptly and equitably corrected by an immediate Notice of Violation, the enforcement officer may issue a Notice of Violation.

18.10.100 Contents of Notice of Violation

For violations of this Title, the Notice of Violation shall contain the following information:

1. The name and address of the alleged violator;
2. The street address or a description sufficient for identification of the property where the alleged violation occurred;
3. A brief statement describing the act and/or omission alleging a violation of this Title;
4. A statement indicating that the Quinault Indian Nation may correct the violation and assess all costs and expenses of administration, removing, impounding and disposing of the property in violation of this Title or otherwise abating the nuisance against the alleged violator;
5. A statement that a monetary penalty of up to \$300.00 per day for each violation shall be assessed against the landowner and/or the vehicle's registered owner;
6. A statement that if any assessed civil penalty is not paid, the Administrator may charge the amount of the penalty as a lien against the property and as a personal obligation of any person in violation of this Title;
7. A statement regarding how the alleged violator shall respond, as outlined in 18.10.130 (2), and that such Response shall be filed with the Quinault Tribal Court and a copy served upon the Quinault Indian Nation Office of Reservation Attorney within thirty (30) calendar days of service of the Notice of Violation; and
8. A description of the available appeal process.

18.10.110 Service of Notice of Violation

A copy of the notice shall be served in the same manner as service of the Notice of Concern outlined in this Title.

The original Notice of Violation shall be filed with the Quinault Tribal Court Clerk and a copy shall be forwarded to the Quinault Indian Nation Office of Reservation Attorney.

The failure of any such person to receive the actual Notice of Violation shall not affect the validity of any proceedings taken under this Title.

18.10.120 Appeal of Notice of Violation

The Notice of Violation may be appealed within fourteen (14) calendar days from the date of the Notice of Violation to the Quinault Tribal Court, pursuant to the provisions of Q.T.C. 30. Any per-day civil penalty shall not accrue during the pendency of such administrative appeal, unless the Quinault Tribal Court determines that the appeal is frivolous or intended solely to delay compliance. Failure to file a timely and complete appeal will constitute a waiver of all rights to an appeal of the Notice of Violation.

18.10.130 Hearings

1. Commencement of Proceedings. The filing of the Notice of Violation shall serve as an initial summons and complaint in Quinault Tribal Court.

2. Response. Each person issued a Notice of Violation under this Title shall return a copy of the Notice of Violation within thirty (30) calendar days to the Quinault Tribal Court. The person issued the Notice of Violation shall check either:

a. Admit the violation by checking box 1. I CHOOSE TO PAY THE MONETARY PENALTY AND HAVE ENCLOSED FULL PAYMENT.

b. Admit the violation but request a hearing before the Quinault Tribal Court to explain the circumstances by checking box 2. I REQUEST A HEARING TO EXPLAIN THE CIRCUMSTANCES. If a person requests a hearing, the Court shall issue a Notice of Hearing with a date and time certain.

c. Request a hearing before the Quinault Tribal Court to contest the violation by checking box 3. I REQUEST A HEARING TO CONTEST THIS VIOLATION NOTICE.

3. Timeline for Hearing. Upon the timely filing of a response, the Quinault Tribal Court shall set a hearing within ninety (90) calendar days, which may be

continued for good cause. In the event a hearing is not set within ninety (90) days, the citation shall be dismissed. A party may appear for a hearing by telephone with prior approval of the Quinault Tribal Court.

4. Conduct at the Hearing. Contested hearings shall be governed by Q.T.C. 30.

5. Order on Contested Hearing. Following the conclusion of the hearing, the Court shall issue a written decision. The decision shall state findings of fact, conclusions of law, and order. The order shall include any and all costs as deemed appropriate by the Court and as specifically authorized by this Title.

6 Appeals. Should either party be unsatisfied with the result, that party may commence an appeal with the Quinault Tribal Court of Appeals pursuant to Q.T.C. 31.

18.10.140

Penalties

The following are allowable sanctions for those found to have committed a public nuisance:

1. Recovery of costs and expenses. In any nuisance action, the Quinault Indian Nation may seek the costs and expenses of removal, disposal, stoppage, or other official efforts to discontinue any public nuisance against the violator.

2. Abatement.

a. Voluntary correction. Whenever the enforcement officer determines that an act or omission creates a public nuisance, a reasonable attempt shall be made to secure voluntary correction from the owner of occupant.

b. Removal by the Nation. Pursuant to the Court's order(s), the act or omission creating a public nuisance may be removed at the Nation's request.

3. Fines. Every person, entity, or corporation violating or failing to comply with any of the provisions of this Title shall be subject to a civil penalty, deemed to be an infraction, in the amount of no more than three hundred dollars (\$300) for each such violation. Each day the violation exists shall be considered a separate violation.

4. Class III Criminal Violation. In addition to, or as an alternative to any other penalty provided in this Title or by other law, upon a fifth separate subsequent offense by the same violator of the provisions contained in this Title within a five (5) year period of time shall also constitute a Class III criminal offense, and may be punished by the maximum penalties authorized by Q.T.C. Title 12 for a Class III offense and/or a penalty, in addition to the civil fine or penalty. In any such action, the proceedings shall be governed by QTC Title 30.

5. Injunction. In addition to, or as an alternative to, any other penalty provided in this Title or by other law, the Nation may petition the Quinault Tribal Court for an injunction of any public nuisance.

6. Other Actions. Nothing contained in this Title shall prevent the Nation from taking such other lawful action as is necessary to prevent or remedy any violation.

7. Civil Warrants Specifically Authorized. Upon application by the Quinault Indian Nation to the Quinault Tribal Court for a warrant, the Court may issue a civil search warrant. No warrant shall be issued except upon probable cause supported by oath or affirmation that a public nuisance has been committed and property used, intended for use, or which has been used in the commission of that offense will be found at the place or on the person to be searched.

18.10.150

Complaints from the Public

Whenever a violation of this Title occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the causes and basis thereof and shall be filed with the Department. The complaining party shall provide an address and phone number to enable the Administrator or his or her designee to contact the complaining party about the written complaint. The Department shall properly record such complaint, investigate as soon as reasonably practicable, and take any necessary action thereon as provided by this Title.

18.11 Applicable Date/Severance/Limitations

18.11.010 Applicable Date

On the date of enactment of this Title by the Quinault Indian Nation Business Committee, this Title shall apply to all activity described by this Title and all acts declared nuisances by any other Title of the Quinault Tribal Code.

18.11.020 Severance

If any paragraph, subparagraph, clause, sentence or phrase of this Title or rules or regulations adopted pursuant to this Title shall be declared invalid, such decision shall not affect the validity of the remaining portions of the Title, and those remaining portions shall remain in full force and effect and to this end, provisions of this Title and any rules or regulations adopted hereunder are declared severable. Any action pending at the date of enactment of this Title shall not be affected by enactment of this Title, and the action shall proceed pursuant to prior provisions of the Quinault Tribal Code or rules or regulations enacted pursuant thereto.

18.11.030 Limitations

Any criminal or civil action for violation of this Title under the Quinault Tribal Code or rules or regulations adopted pursuant to this Title shall be filed within one (1) year from the date of the alleged activity giving rise to the violation or discovery thereof.

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Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360) 276 - 8211

QUINAULT BUSINESS COMMITTEE RESOLUTION NO. ~~08-132-87~~ TITLE 18 AMENDMENTS

WHEREAS, the Quinault Business Committee (Committee) is the governing body of the Quinault Indian Nation; and

WHEREAS, the Committee is charged under Article V of the Constitution of the Quinault Indian Nation with the duty of protecting the health, welfare and safety of the People of the Quinault Indian Reservation; and

WHEREAS, the Committee finds that the Quinault Indian Nation lacks adequate provisions concerning the safe and orderly habitation of the lands under the jurisdiction of the Quinault Indian Nation, and the beauty of the Quinault Indian Reservation

WHEREAS, the Committee believes that Title 18 should be amended to better protect the welfare and safety of the people of the Quinault Indian Nation; and

WHEREAS, the Committee finds that the Current Title 18 should be amended to reflect the Quinault Indian Nation's current goals and objectives;

WHEREAS, the Committee finds that public notice was given concerning on Title 18, and the Committee held public comment hearings in Queets, WA on May 27, 2008 Taholah, WA on December 22, 2008 and published an article in the Nugguam requesting comments

NOW, THEREFORE, BE IT RESOLVED, that Title 18 as amended is enacted into law and shall be placed in the Quinault Tribal Code; and

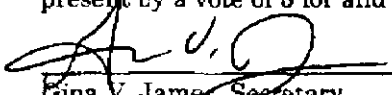
NOW, THEREFORE, BE IT RESOLVED, that the amended Title 18 shall take affect the 1st day of March 2009, and apply to acts, which occur on or after that date.



Fawn R. Sharp, President
Quinault Indian Nation Business

CERTIFICATION

I hereby certify that the Quinault Indian Nation Business Committee duly adopted the above resolution at a regular meeting of the Business Committee at Taholah, Washington, on the 9 day of February 2009, at which time a quorum was present by a vote of 5 for and 0 against and 1 abstaining.



Gina V. James, Secretary
Quinault Indian Nation Business Committee

EXHIBIT F



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Pearl Capoeman-Baller, President
Quinalt Indian Nation
P.O. Box 189
Taholah, WA 98587

JAN 26 2001

Dear Ms. Capoeman-Baller, *Pearl*

EPA is pleased to approve the following documents, establishing eligibility for the Quinalt Indian Nation to receive funding under Section 319 of the Clean Water Act:

1) Application for "treatment as state," 2) Nonpoint Source Assessment Report, and 3) Nonpoint Source Management Program. This approval is based on legal analysis of the "treatment as state" application by Regional Counsel, review and approval of documents by the Nonpoint Source Program in the Office of Ecosystems and Communities, and the experience of the Tribal Office.

Please note that we are specifically approving only those portions of these documents that *pertain to waters of a reservation*. We are interpreting this to mean that the Tribe may use CWA grant funds outside the Reservation or tribal trust lands if the eligible activity pertains to management of the waters within the Reservation or tribal trust lands, and this relationship is explained in its work plan. If the work plan includes such off-reservation activities, the grant agreement will condition the use of the funds on the Tribe obtaining necessary access agreements or permission to do such activities because the CWA does not provide additional authority over rights of access to off-reservation waters.

The nonpoint source assessment reports and management programs also include information and planned activities for waters in treaty-reserved "usual and accustomed" areas outside of reservations which tribes have traditionally used for hunting, fishing, and gathering. These may be important aspects of tribes' overall strategies to reduce the impacts of nonpoint source pollution on tribal resources. However, activities that do not pertain to waters of the reservation are outside the scope of tribal authority under section 518 of the CWA, as presently interpreted, and cannot be approved or funded.

Now that eligibility is established, the Quinalt Tribe should submit a work plan for \$30,000 FY 2001 base funding under 319 to Robin Slate by February 16, 2001. You may also submit a project summary proposal for \$50,000 to \$100,000 to EPA Headquarters (cc. the Region) to compete for watershed funds by February 5, 2001. Please see *Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2001* for further details. You may call Teena Reichgott, Nonpoint Source Program Coordinator at 206-553-1601 if you have questions.

Congratulations. We look forward to working with you as you implement your Nonpoint Source Control Program.

Sincerely,



Chuck Findley
Acting Regional Administrator

cc: Robin Slate, EPA
Alan Moomaw, EPA
Teena Reichgott, EPA
Ann Prezyna, EPA
George Onwumere, QIN

EXHIBIT G



Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360) 276-8211

Delegation Agreement

Final Draft

Dec. 19, 2006

Received

SEP 17 2007

Office Of Air, Waste
And Toxics

Agreement for Partial Delegation of the Federal Implementation Plan for the Quinault Indian Reservation by the United States Environmental Protection Agency, Region 10 to the Quinault Indian Nation

This agreement between the Quinault Indian Nation (QIN) and the U.S. Environmental Protection Agency (EPA), Region 10, sets forth the legal and procedural basis for partial delegation of administrative authority for implementation of certain sections of the Federal Implementation Plan (FIP) for the Quinault Indian Reservation (Reservation) (40 CFR Part 49 Subpart M, Sections 49.10581-49.10640), hereafter referred to as the FIP.

I. Purpose

The purpose of this Delegation Agreement is to delegate certain administrative responsibilities and authorities of the FIP to the QIN. The FIP establishes Federal regulations and requirements applicable to all sources of air pollution located within the federally-recognized exterior boundary of the Reservation. Upon the effective date of this Delegation Agreement, EPA Region 10 delegates to the QIN authority to administer portions of the FIP on all lands within the Reservation.

II. Legal Authority

- A. The Clean Air Act Amendments of 1990 (CAA, or Act) provide EPA authority to promulgate regulations to protect air quality within Indian country. See Section 301(a) and 301(d)(4) of the Act. EPA Region 10 has promulgated such regulations for the Reservation. See 40 CFR Part 49 Subpart C and 40 CFR Part 49 Subpart M.
- B. Pursuant to 40 CFR 49.122, EPA may delegate to an Indian Tribe partial administrative authority. Tribes receiving delegation do not have the authority to further delegate this authority.
- C. 40 CFR Part 49 Subpart M, "Implementation Plans for Tribes - Region X", identifies for each Indian Reservation specific regulations applicable to each Reservation. 40 CFR Part 49 Subpart M, contain the FIP for the Reservation.
- D. The QIN has authority to conduct activities in support of this delegation. This Delegation Agreement neither creates nor diminishes any authority otherwise established by tribal or federal law.
- E. EPA retains full authority and responsibility for implementation, administration, and enforcement of any and all components of the FIP.
- F. The QIN retains its inherent sovereignty over Indians and non-Indians within the boundaries of the Quinault Indian Reservation as reserved in the Treaty with the Quinault of 1855 and as otherwise provided by law.

III. FIP

The following are the federal regulations from 40 CFR 49 that apply to all sources of air pollution within the Reservation, which constitute the FIP:

Section 49.123, General Provisions

The General Provisions of the FIP contain definition of terms, requirements for testing, requirements for monitoring, recordkeeping, and reporting, discussion of credible evidence, and provisions incorporated by reference (e.g. ASTM test methods).

Section 49.124, Rule for limiting visible emissions

This section limits visible emissions of air pollutants from certain air pollution sources operating within the Reservation to control emissions of particulate matter to the atmosphere and to indicate whether a source is continuously maintained and properly operated.

Section 49.125, Rule for limiting the emissions of particulate matter

This section limits the amount of particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.126, Rule for limiting fugitive particulate matter emissions

This section limits the amount of fugitive particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.129, Rule for limiting emissions of sulfur dioxides

This section limits the amount of sulfur dioxide that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of sulfur dioxide.

Section 49.130, Rule for limiting sulfur in fuels

This section limits the amount of sulfur contained in fuels that are burned at stationary sources within the Reservation to control emissions of sulfur dioxide to the atmosphere and ground level sulfur dioxide concentrations.

Section 49.131, General rule for open burning

This section limits the types of materials that can be openly burned within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter. This rule also provides the authority to issue a burn ban should conditions warrant.

Section 49.135, Rule for emissions detrimental to public health or welfare

This section is intended to prevent the emissions of air pollutants from any air pollution source operating within the Reservation from being detrimental to public health or welfare.

Section 49.137, Rule for air pollution episodes

This section establishes procedures for addressing the excessive build-up within the Reservation of certain air pollutants during periods of stagnant air. This rule is intended to

prevent the occurrence of an air pollution emergency within the Reservation due to the effects of air pollution on human health.

Section 49.138, Rule for the registration of air pollution sources and the reporting of emissions

This section requires certain air pollution sources operating within the Reservation to register with EPA and submit annual emissions reports. Registration allows EPA to develop and maintain a current and accurate record of air pollution sources and their emissions within the Reservation.

Section 49.139, Rule for non-Title V operating permits.

This section establishes a permit program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Reservation.

IV. Delegated Provisions of the FIP

Partial authority to administer the FIP may be delegated to the QIN for all sources of air pollution located within the Reservation, that are subject to the FIP, (40 CFR 49). This section of the Delegation Agreement identifies those provisions where the QIN will assist EPA with implementing delegated provisions. In addition, this Delegation Agreement identifies program elements that require coordination and communication between EPA and the QIN.

A. Section 49.123, General Provisions

The QIN is delegated authority for the General Provisions of the FIP which contains definition of terms, recordkeeping and reporting requirements, a discussion of credible evidence, and provisions incorporated by reference (e.g. ASTM test methods).

B. Section 49.124 Rule for limiting visible emissions

The QIN is delegated authority to administer the general rule for visible emissions, including the authority to determine whether a source has demonstrated that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet 20% opacity. See 40 CFR 49.124(d)(2). This determination should be made by an individual certified to make opacity determinations (certified smoke reader).

C. Section 49.131 General rule for open burning

The QIN is delegated authority to administer the general rule for open burning, including the authority to declare a burn ban under 40 CFR 49.131(d)(2), which provides for issuing a burn ban when conditions warrant, such as when air quality levels have exceeded or are expected to exceed 75% of any National Ambient Air Quality Standard for particulate matter and these levels are projected to continue, or recur, over at least the next 24 hours.

The QIN is delegated authority to coordinate burn bans, to the extent practicable, with surrounding jurisdictions.

The QIN is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, open outdoor fires used by qualified personnel to train fire fighters. See 40 CFR 49.131(c)(4).

The QIN is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, one outdoor fire each year to dispose of fireworks and associated packaging materials. See 40 CFR 49.131(c)(5).

D. Section 49.137 Rule for air pollution episodes

The QIN is delegated authority to administer the rule for air pollution episodes including the authority to issue an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency pursuant to Section 49.137, Rule for air pollution episodes.

The QIN is delegated authority to coordinate, to the extent practicable, the issuance of an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency with surrounding jurisdictions.

E. QIN request for additional provisions of FIP

The QIN reserves the right to request amendment of this Delegation Agreement to add delegated authority for additional rules.

V. Complaint Response

A. The QIN is delegated authority to initially respond to air quality complaints about episodes originating on the Reservation as resources allow. This initial response will generally include a site visit to the source, request for additional information, and compliance assistance to the source owner, including information and education about the requirements to comply with the FIP. Information gathered during a site visit response will be transmitted to EPA in writing. EPA will staff the FARR HOTLINE (located in EPA's Seattle office) to log complaints and will immediately report complaints about episodes originating on the Reservation to the QIN, Air Quality Office.

B. EPA, in consultation with the QIN as provided in Section VII of this Delegation Agreement, will decide whether additional response is warranted and the nature and extent of that response. Complaints that result in a violation of the FIP, and that warrant an enforcement response, will be addressed by EPA in accordance with established federal policies and procedures, following consultation with the QIN.

C. The QIN will maintain a log containing details on each complaint it receives related to the FIP. The QIN will submit a summary of complaints and its responses to the complaints to EPA on a quarterly basis for entry into EPA's data management system(s).

VI. Inspections & Investigations

A. The QIN may assist EPA in compliance monitoring activities by investigating complaints and conducting compliance inspections as resources allow, according to guidelines provided to

QIN by EPA. For example, the QIN may conduct compliance inspections of sources, registered sources, general open, and forest open burning sources in accord with an annual inspection work plan that will be jointly developed between QIN and EPA as part of Inspector Credential issuance to a QIN employee by EPA. These activities may include an inspection or investigation of open burning activities regulated under the General rule for open burning, 40 CFR 49.131. These activities may also include determining source opacity levels or other fact finding with respect to applicable FIP requirements for which the QIN's staff have established capability.

B. EPA may issue Inspector Credentials to qualified employees of the QIN once EPA requirements have been met. The requirements for obtaining and tracking EPA inspector credentials are described in the "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA", September 30, 2004. The conditions and limitations set forth in this Guidance will be incorporated into a separate written Authorization Agreement between the QIN and EPA. A separate annual inspection workplan will be developed jointly between the QIN and EPA, contingent upon issuing Inspector Credentials to a QIN employee.

C. EPA will provide the necessary training as resources allow, or information on where to obtain training for QIN inspectors to qualify for EPA-authorized inspector credentials, including EPA's basic inspector training, health and safety training, air program specific training, and training on the terms/conditions in the Authorization Agreement that impact the inspector.

D. The QIN may also assign staff, identified in the annual inspection workplan, who are authorized representatives of EPA or the QIN to conduct inspections and investigations to evaluate compliance with the FIP.

VII. Enforcement

A. Enforcement of the FIP will remain the sole responsibility of EPA Region 10.

B. EPA, to the extent practicable, will consult with the QIN prior to initiating any enforcement action for sources located within the Reservation.

C. EPA Region 10 will follow all established Federal policies and procedures, including policies and procedures issued by the Office of Enforcement and Compliance Assurance (OECA) and EPA Region 10, in the pursuit of enforcement remedies for violations of the FIP.

D. EPA will, on a semi-annual basis, provide the QIN a report on the status of all air enforcement actions for sources located within the Reservation.

VIII. Data and Reporting Requirements

- A. Data and information obtained by the QIN relating to implementation of delegated portions of the FIP shall be reported to EPA in summary format, on a quarterly basis.
- B. EPA shall furnish the QIN requested information in its files related to implementation of the FIP.
- C. Employees of the QIN should not accept any information submitted to the QIN under a claim as "confidential business information" as defined in 40 CFR Part 2. The QIN will return such information and instruct the person making such a claim to submit the protected information directly to EPA. Information without a claim of "confidential business information" may be made available to the public without further notice.

IX. Funding

- A. EPA expects to provide funds to the QIN to carry out its responsibilities delegated under this Delegation Agreement, as resources allow. This funding will be provided through a Direct Implementation Tribal Cooperative Agreement (DITCA), Clean Air Act Section 105 Grant or other appropriate funding mechanism.
- B. The QIN may promulgate tribal regulations authorizing the collection of fees.

X. Additional Provisions

- A. The QIN has, or will have, the technical capability and adequate resources to carry out responsibilities delegated through this Delegation Agreement. As requested by the QIN, EPA will strive to provide technical assistance and resources to meet needs identified by the QIN or EPA. See IX above.
- B. The QIN will make every reasonable attempt to resolve issues arising between a regulated entity and the QIN from the QIN's decisions or actions relating to their delegated authority under this agreement, before raising the issue to EPA.
- C. EPA Region 10 and the QIN will maintain open communication. Should an issue arise between EPA and the QIN, best efforts should be made for resolution at the staff level. If staff are unable to resolve the issue, staff will present the issue in writing to progressively higher levels of management until consensus is reached. If consensus cannot be reached, EPA retains final implementation and enforcement authority for the FIP.
- D. The QIN will follow all EPA-issued policies, guidance and determinations involving implementation of the FIP and this Delegation Agreement, as provided by EPA. EPA will provide the QIN with copies of these policies, guidance, and determinations. Where no current

EPA policy or guidance clearly covers a specific situation, the QIN and EPA Region 10 shall consult with each other.

XI. Agreement Evaluation, Modification, or Termination

A. EPA and the QIN will engage in an annual evaluation of this Delegation Agreement through government-to-government consultation. This evaluation may include among other things, nature and level of coordination, identification of level of effort, description of program activities, costs, evaluation of response to citizens' complaints, and identification of areas for improvement.

B. This Agreement may be modified to account for any changes to the FIP promulgated after May 1, 2005, and by agreement to both parties hereto. Implementation of new or revised requirements after May 1, 2005, will remain the sole responsibility of EPA until this Agreement is modified.

C. Pursuant to 40 CFR Part 49.122(c)(2), this Delegation Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the QIN. Any substantive modifications or amendments to this agreement will be subject to the procedures described in 40 CFR Part 49 Section 49.122(d)(2), including public notice.

D. The QIN may, at any time, submit to the Regional Administrator a written request for modification or amendment of this Delegation Agreement.

E. If QIN resources become limited and it is unable to comply with this Agreement, the QIN reserves the right to temporarily stay the implementation of this Agreement. In such case, the QIN will notify the EPA in writing of such temporary staying of this Agreement.

F. The QIN may, at any time, terminate this Agreement by providing sixty (60) days written notice to the Regional Administrator.

XII. Appendix

"Federal Air Rules for Reservations, Implementation Framework"


XIII. Signatures

EPA and the QIN recognize that each reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is, or shall be construed, to be a waiver of the sovereignty of the QIN or the United States. By entering into this Delegation Agreement, EPA and the QIN reserve, and do not waive, any jurisdictional claims relating to proper application of the CAA or any other matter. This Delegation Agreement is intended solely for the purpose of facilitating intergovernmental cooperation, and creates no rights

in third parties or the right of third parties to judicial review.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below.

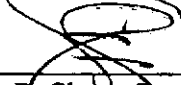
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Elin Miller, Regional Administrator
U.S. EPA Region 10

Date: OCT 4 2007

QUINAULT INDIAN NATION



Fawn R. Sharp, President
Quinault Indian Nation

Date:

EXHIBIT H

117-10151

Return Address

LynDee Wells
DORSEY & WHITNEY LLP
1420 Fifth Avenue, Suite 3400
Seattle, Washington 98101

**REAL ESTATE EXCISE TAX
EXEMPT TRANSACTION**
RONALD A. STRABBING, TREASURER
Grays Harbor County, Montesano, WA
R. Strabbing Date 8/16/06

<p>Document Title(s) (or transactions contained therein):</p> <ol style="list-style-type: none"> GRANT DEED OF CONSERVATION EASEMENT
<p>Reference Number(s) of Documents assigned or released: (on page ___ of documents(s))</p>
<p>Grantor(s) (Last name first, then first name and initials):</p> <ol style="list-style-type: none"> UNITED STATES OF AMERICA, AS TRUSTEE FOR THE QUINAULT INDIAN NATION QUINAULT INDIAN NATION <input type="checkbox"/> Additional names on page ___ of document.
<p>Grantee(s) (Last name first, then first name and initials):</p> <ol style="list-style-type: none"> UNITED STATES OF AMERICA THE PUBLIC <input type="checkbox"/> Additional names on page ___ of document.
<p>Legal description (abbreviated: i.e. lot, block, plat or section, township, range)</p> <p>Ptn of Northern Boundary Expansion Area, as conveyed to Quinault Indian Nation in November 1988 by Public Law 100-638, in Townships 23 and 24 North, Ranges 10 and 10½ West</p> <p><input checked="" type="checkbox"/> Full legal is on pages <u>10 through 26</u> of document.</p>
<p>Assessor's Property Tax Parcel/Account Number</p> <p>None</p>



2006-08170018

Page: 1 of 27

DORSEY & WHITNEY LLP

58.00 ESMT

08/17/2006 11:21A
Grays Harbor Co

Grant Deed of Conservation Easement

THIS GRANT DEED OF CONSERVATION EASEMENT by and between the UNITED STATES OF AMERICA AS TRUSTEE FOR THE QUINAULT INDIAN NATION, a federally-recognized Indian tribe, hereinafter GRANTOR, the QUINAULT INDIAN NATION as beneficial owner of the Protected Property, and consenting party to this Conservation Easement, and the UNITED STATES OF AMERICA and its assigns, hereinafter GRANTEE, is made with reference to the following facts:

1. RECITALS

- 1.1 Grantor holds the Protected Property that is the subject of this Conservation Easement in trust for the Quinault Indian Nation (the "Nation").
- 1.2 The Nation is the beneficial owner of approximately 4,207 acres of real property situated within the exterior boundaries of the Quinault Indian Reservation in Grays Harbor and Jefferson Counties, State of Washington, more particularly described and illustrated in Exhibit A, which is attached and made a part hereof by this reference. The Nation, the Grantor, and the Grantee have agreed to a \$32.2 million purchase price for Conservation Easements covering the entire 4,207 acres. This Conservation Easement applies only to the property designated in Section 2.1, as more particularly described and illustrated in Exhibit B (the "Protected Property").
- 1.3 Grantor, Grantee, and the Nation agree to be bound by the terms and conditions of this Conservation Easement.
- 1.4 The Protected Property is part of a significant late-successional forest ecosystem that provides habitat important to the conservation recovery of the threatened marbled murrelet and to other species dependent on late-successional forest habitat.
- 1.5 Preservation of the Protected Property in its current relatively undeveloped condition and providing for conveyance of all future development rights, except as reserved in Paragraph 5 below, to Grantee, in perpetuity, is important to the Grantor, the Nation, the Grantee, and the people of the United States.
- 1.6 As the beneficial owner and governing Tribe of the Protected Property, the Nation exercises certain regulatory jurisdiction over the Protected Property and possesses certain rights to use, identify, preserve and protect in perpetuity the natural elements and processes and the ecological, wildlife, woodland, scenic and open space value of the Protected Property.
- 1.7 The United States, acting through the Bureau of Indian Affairs (the "BIA"), has authority to grant easements, 25 U.S.C. §§ 323 and 327.
- 1.8 The United States Fish and Wildlife Service, Department of the Interior (the "Service"), pursuant to the Fish and Wildlife Coordination Act 16 U.S.C. § 661, the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742a - 742j, as amended) and the Endangered Species Act (16 U.S.C. §§ 1534), is authorized to acquire land or



interest in land, manage, conserve and protect fish and wildlife resources, and to cooperate with other parties in doing so.

- 1.9 The easement interests described herein will be acquired and managed by the Service.
- 1.10 Plans or other actions that require BIA review will continue to be reviewed by the BIA.

2. CONVEYANCE AND CONSIDERATION

- 2.1 For the reasons stated above and in consideration of the mutual covenants contained herein and the payment to the Nation of the total sum of \$14,044,516.00, along with the consent of the Nation pursuant to Article V, Section 3(a)(e)(f) and (k) of the Constitution of the Quinault Indian Nation, adopted March 22, 1975, and Resolution No. 04-27-82 of the Quinault Indian Nation Business Committee, and in accordance with the necessary Tribal consent required in 25 U.S.C. § 324, the Grantor does hereby convey and warrant to the Grantee and its assigns a perpetual Conservation Easement over 1,375 acres, more or less, consisting of the rights in the Protected Property herein enumerated, which shall vest immediately upon transfer to the Grantee, subject to the restrictions set forth herein.
- 2.2 This conveyance is of an interest in real property and is made as an absolute, unconditional, unqualified and completed conveyance subject to the mutual covenants and restrictions set forth herein.
- 2.3 The acquiring federal agency is the Service. The BIA will record the land documents affecting the land encumbered by this grant deed with the county and BIA, Northwest Regional Land Title and Records Office.

3. PURPOSE

- 3.1 The purpose of this Conservation Easement is to preserve, protect, restore, enhance, maintain, and promote the functional value of existing (the current "Old Growth") and potential future (the current "Second Growth") late-successional forest within the Protected Property and its use as habitat for the threatened marbled murrelet and other species dependent on late successional forest habitat. Grantor, Grantee, and the Nation shall accomplish this purpose by adhering to the terms and conditions set forth in this Conservation Easement.
- 3.2 Grantor, Grantee, and the Nation intend that the Protected Property shall not be converted or directed to any uses other than those provided herein.
- 3.3 It is the intent and desire of the Grantor, Grantee, and the Nation that the Protected Property not be disturbed by removal of trees unless Grantee determines it is in the interests of the Grantee for the protection and enhancement of the purposes of the Conservation Easement. The parties expect that the Service may exercise approval under Section 6.1 for the selective removal of individual trees from time to time to encourage the current Second Growth to attain late-successional characteristics such as multispecies and multilayered assemblages of trees; moderate-to-high accumulations of large logs and snags; moderate-to-high

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canopy closure; moderate-to-high numbers of trees with physical imperfections such as cavities, broken tops, and large deformed limbs; and moderate-to-high accumulations of fungi, lichens and bryophytes.

- 3.4 By the execution of this document, the Nation is not obligated to take any new action or to incur any additional expense related to the maintenance of the Protected Property except as expressly set forth in this document.

3.4.1 Where the Nation may remove trees from the Protected Property under the conditions of the Easement, the Nation has the primary responsibility to comply with all environmental and other applicable laws. In those instances, the Nation will bear the costs of environmental planning and compliance. In instances where the Service will remove trees, the Service will bear the costs of environmental planning and compliance.

- 3.5 The purposes of this Conservation Easement, where mentioned in this document, are those found in this Section.

4. GRANTEE'S RIGHTS

- 4.1 The rights conveyed to Grantee by this Conservation Easement are the following:

4.1.1 To preserve and protect, in perpetuity, those natural elements that enhance the functional value of the Protected Property as habitat for the threatened marbled murrelet and other species dependent on late successional forest habitat;

4.1.2 To prevent activities from occurring within the Protected Property that are inconsistent with the purposes of this Conservation Easement;

4.1.3 To perform such activities on the Protected Property as the Grantee determines are necessary or convenient to carry out the rights granted by this Conservation Easement, including the right to enter and perform activities that will promote the purposes of this Conservation Easement as stated in Section 3, including removal of individual trees if the Nation declines the opportunity, after due notice, where the Service has determined such activity is appropriate pursuant to the purposes set forth in Section 3; and

4.1.4 To enter upon the Protected Property in a manner that does not unreasonably disturb the use of the Protected Property by the Nation and, where allowing other persons to enter the Protected Property upon prior written approval of the Nation, to (a) perform or enforce the rights herein granted and to determine that the Protected Property is being used in compliance with the terms of the Conservation Easement, and (b) observe and study the Protected Property for educational and biological purposes or for other purposes consistent with the purposes of this Conservation Easement. Where the Grantee plans to construct new roads or place any building, mobile home, billboard, or utility tower on the Protected Property, it may do so only with the Nation's prior written approval. The Grantee shall also have the right of immediate entry to the Protected Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the conservation values protected by the Conservation Easement.

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- 4.2 Unless specifically provided, nothing herein shall be construed as affording the general public access to any portion of the Protected Property subject to this Conservation Easement.
- 4.3 The Grantee's enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, subject to Paragraph 7, below. Any forbearance to exercise its rights hereunder in the event of any breach of this Conservation Easement by the Nation, its successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

5. RESERVED RIGHTS, USES, AND ACTIVITIES SUBJECT TO THE EASEMENT

Grantor and the Nation reserves to the Nation as beneficial owner of the Protected Property and, if assigned, to the Nation's successors and assigns, all rights accruing from its beneficial ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property which are not prohibited herein and which are not inconsistent with the purposes of this Conservation Easement. So long as they are not prohibited and are not inconsistent with the purposes of this Easement, and without limiting the foregoing reserved rights, the Grantee agrees that the following uses are included within the Nation's reserved rights and are allowed:

- 5.1 To protect, manage and regulate the harvesting of minor forest products - not including trees - such as brush, grasses or mushrooms, on the Protected Property according to tribal and applicable federal law;
- 5.2 To protect, manage and regulate wildlife on the Protected Property according to tribal and applicable federal law, including such activities as hunting, fishing and trapping;
- 5.3 To fish, trap, hunt, camp, and hand-gather non-timber products (e.g., medicinal and edible plants, grasses, florist greens), provided that such hand-gathering shall not occur near known marbled murrelet nesting trees during the nesting season. Harvest of such products including traditional harvest of cedar bark shall not extend over 25 feet above the ground in suitable nesting trees (based on the lowest-known height of nesting platforms as determined by the Service) and these activities shall not damage the trees (in particular, traditional methods of cedar bark removal cannot remove bark from more than one-quarter of any tree's circumference);
- 5.4 Service approval is required for development and use of any black rock areas in the Protected Property, including the known black rock area within the North half of Section 10, Township 23 North, Range 10 West, South 2, Willamette Meridian, in Grays Harbor County, Washington. Development of any such black rock areas will not involve cutting or removal of trees without prior written Service approval and will be subject to time of day restrictions during the marbled murrelet nesting season;
- 5.5 To use tailholds and guideline trees to harvest areas adjacent to and adjoining the Protected Property and existing haul roads to transport timber, minor forest



products and rock within the Protected Property. Protective efforts are required to avoid or minimize killing or damaging trees due to the use of tailhold and guideline trees within those areas. The Nation shall inform the Service of the cumulative number of acres of trees that are lost due to their use as tailholds or guidelines. The maximum cumulative number of acres of trees within the areas described and illustrated in Exhibit A which may be lost due to such use during the life of this easement is 6.5 acres. So long as the marbled murrelet remains listed as threatened or endangered pursuant to the Endangered Species Act, the use of haul roads shall be subject to time of day restrictions during the marbled murrelet nesting season. Other restrictions may apply to the use of tailhold or guideline trees or existing haul roads within the Protected Property if other species dependent on late-successional forest habitat require such restrictions. In the absence of prior, written Service approval, there will be no additional tailholds, guideline trees, or haul road use allowed within the Protected Property;

- 5.6 With prior written Service approval, in instances where it is determined that something on the Protected Property poses a threat to public safety or threatens the health of the resources of the Nation's property adjoining the protected area, to remove from the Protected Property windthrown, fallen, dangerous or diseased trees;
- 5.7 To maintain existing access and existing fire-protection roads across the Protected Property; and
- 5.8 To retain any and all tax or density credits or benefits from or attributable to the Protected Property which may be available under state, federal or local law, ordinances, rules or regulations for the development of properties.

6. PROHIBITED AND INCONSISTENT USES

The following uses and practices within the Protected Property are inconsistent with the purposes of this Conservation Easement and are prohibited:

- 6.1 To thin or harvest any timber, or to remove any trees, whether standing or on the ground, without the prior written approval of the Service. Service approval may be granted for the reasons stated in section 3.3;
- 6.2 To change, disturb, alter or impair the Protected Property except as provided herein;
- 6.3 To conduct salvage of dead or down trees, including cedar, or to remove firewood of dead or down trees, in the Protected Property. The Service may approve this use if the Service determines that such salvage and/or removal is not inconsistent with the purposes of this Conservation Easement;
- 6.4 To construct new roads, or modify existing roads, except with prior written Service approval;
- 6.5 To store, dump, or otherwise dispose of toxic and/or hazardous materials. To dump, dispose of refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris. Thinning young

forest stands and leaving the downed trees in place shall not constitute dumping under this provision;

- 6.6 To convert native vegetation to exotic species or the introduction of non-native plant species; farming, plowing, or any type of non-silvicultural cultivation;
- 6.7 To introduce or release non-native animal species;
- 6.8 To graze or pasture livestock;
- 6.9 To construct or place any buildings, mobile homes, billboards, utility towers or other structures, except with prior written Service approval;
- 6.10 To apply biocides, herbicides, defoliants, chemical fertilizers, sewage sludge, or other chemicals, except with prior written Service approval;
- 6.11 To change the topography of the Protected Property by placing on it any soil, dredging spoils, land fill, or other material, except as specifically permitted in writing in advance by the Service;
- 6.12 To change the topography or surface hydrology or divert or cause the diversion of surface or underground water into, within or out of the Property without prior written approval from the Service;
- 6.13 Fires, other than those naturally caused, are prohibited;
- 6.14 To grant additional easements, rights-of-way, or other interests in the Protected Property without the prior written authorization of the Service;
- 6.15 To legally subdivide, record a subdivision plan, partition, or any other division of the Protected Property into parcels beyond those necessary for conveyance of the Conservation Easements;
- 6.16 To transfer any appurtenant water right required to maintain and restore the biological resources of the Protected Property; and
- 6.17 Any use inconsistent with the purposes of this Conservation Easement as listed in Section 3 is prohibited.

Whenever the Nation or persons acting on its behalf or at its direction becomes aware of any activities occurring on the Protected Property that are prohibited by this Conservation Easement, the Nation will report such activities to the Service within three (3) days.

7. APPROVALS/REMEDIES/ENFORCEMENT

- 7.1 Where Sections 5, 6, or this Section require written approval from the Service, that approval must come from the Regional Director of the Service. Before determining an activity is inconsistent with the terms of this Conservation Easement, the Regional Director of the Service will consult with the BIA Regional Director. The Service Regional Director's decision on whether to grant or deny such approval shall be final for the Department.
- 7.2 Where Sections 5, 6, or this Section require written approval from the Nation, that approval must come from the principal elected official of the Nation or his/her designee.



- 7.3 If the Grantee or the Nation determine that there is a violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation or threatened violation, and where the violation involved injury to the Protected Property resulting from any use or activity inconsistent with this Conservation Easement, to restore, where possible, the portion of the Protected Property so injured. In any instance, measures to cure the violation shall be reviewed and approved in advance, in writing, by the Service. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in federal court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including monetary damages, and where possible, to require restoration of the Protected Property to the condition that existed prior to any such injury.
- 7.4 The Grantor, Grantee, and the Nation agree that for any cut or removal of trees on the Protected Property by the Nation, or persons or entities acting on behalf of or at the direction of the Nation, which was not expressly authorized by the Service in an advance writing, the Nation agrees to pay liquidated damages valued at three times the value of the timber when cut or removed. When someone other than the Nation or persons or entities acting on behalf of or at the direction of the Nation cuts or removes trees on the Protected Property, the Nation agrees to forego any right it might have to the proceeds obtained by the United States with respect to such trees pursuant to 25 U.S.C. § 3106.
- 7.5 Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against the Nation or for the Nation to bring any action against the Service for any injury to, or change in the Protected Property resulting from *force majeure*. *Force majeure*, for purposes of this Easement, is defined as any event arising from causes beyond the control of the Nation, or persons or entities acting on behalf of or at the direction of the Nation or the Service. Any *force majeure* event shall be reported to the parties' designated representative, where possible as it is occurring, or within seventy-two hours.
- 7.5 Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the Grantee to effect the conservation purposes of this Conservation Easement as stated in Section 3 above, the Endangered Species Act, and other federal conservation laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 7.6 The Federal government, its successors, and assigns, in the manner and to the extent provided by the Federal Tort Claims Act, as amended (28 U.S.C. §§ 1346,

2671-2680), shall be liable for, claims for damage and loss of property, personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the Federal government while acting within the scope of his office or employment in the performance of this Conservation Easement.

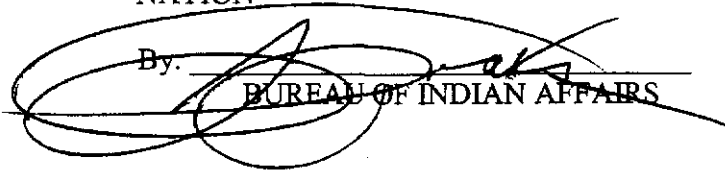
8. SUCCESSION, COVENANTS, AND SUBSEQUENT TRANSFERS

- 8.1 The Grantee may assign this Conservation Easement with the prior written consent of the Nation, except that any such assignment by the Grantee (or successors) must require the assignee to carry out the purposes of this Conservation Easement.
- 8.2 It is the express intent of the Grantor, Grantee, and the Nation that the provisions of this Conservation Easement shall run with and burden title to the Protected Property in perpetuity and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- 8.3 The Nation agrees to incorporate the terms of this Easement in any deed or other legal instrument by which any interest in any or a portion of the Protected Property is transferred. Any transfer shall be subject to Grantee approval.

IN WITNESS WHEREOF, the Grantor, the Grantee, and the Nation have executed this instrument this 19th day of April 2006.

2006 OCT 12 AM 7:16

THE UNITED STATES OF AMERICA AS TRUSTEE FOR THE QUINAULT INDIAN NATION

By:  BUREAU OF INDIAN AFFAIRS

QUINAULT INDIAN NATION

FISH AND WILDLIFE SERVICE

By: Paul Capeman-Ballen
President

By: David Werley
Regional Director
Acting

EXHIBIT A

117-10151

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

ECOLOGICAL SERVICES CONSERVATION EASEMENTS
QUINAUT INDIAN NATION TRACTS
TRACT 1 AND 2 OF EASEMENT BLOCK 1

1375 Acres more or less

EFFERSON A CANTON WASHINGTON

1:25,000

0 100 200 300 400 500 600 700 800 900 1000 FEET

T. 23 & 24 N., R. 10 & 10 1/2 W., W.M.

FEBRUARY 14, 2004

AP 1, TRACT OF ALASKA
TRACT 1 OF BLOCK 1

See Map of Block 1
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AP 1, TRACT OF ALASKA
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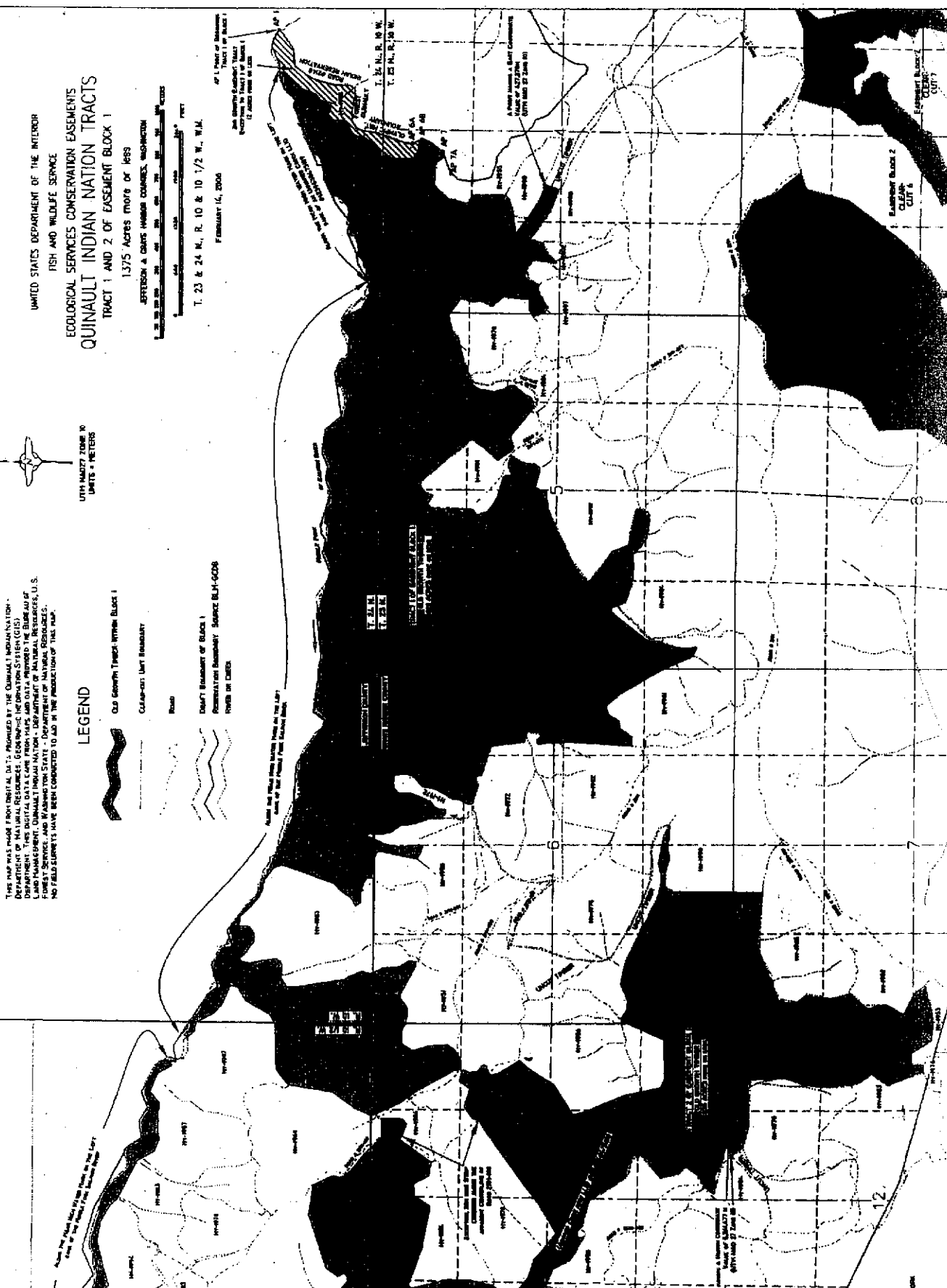
AP 1, TRACT OF ALASKA
TRACT 1 OF BLOCK 1



THE MAP WAS MADE FROM DIGITAL DATA PROVIDED BY THE QUINAUT INDIAN NATION DEPARTMENT OF NATURAL RESOURCES. GEOGRAPHIC INFORMATION SYSTEM (GIS) DEPARTMENT. THIS DIGITAL DATA CAME FROM PAPER MAP DATA PROVIDED BY THE BUREAU OF LAND MANAGEMENT, QUINAUT INDIAN NATION, DEPARTMENT OF NATURAL RESOURCES, U.S. DEPARTMENT OF THE INTERIOR. THE DATA WAS PROVIDED TO THE BUREAU OF LAND MANAGEMENT BY THE QUINAUT INDIAN NATION. NO FIELD SURVEYS HAVE BEEN CONDUCTED TO ADD TO THE PRODUCTION OF THIS MAP.

LEGEND

- Old Growth Tract within Block 1
- Clear-cut Unit Boundary
- Road
- Draft Boundary of Block 1
- Potential Boundary Source BLM-G008
- Power or Creek



ATTACHMENT B, EXHIBIT 1

OLD GROWTH TIMBER TRACT 1 OF EASEMENT BLOCK 1

The following described easement tract is contained all within Townships 23 and 24 North, Ranges 10 and 10-½ West, Willamette Meridian and within those lands known as the "Northern Boundary Expansion Area" conveyed to the Quinault Indian Nation in November 1988 by Public Law 100-638.

Points with the designation of AP-1, AP-6B, AP-6C, AP-7, and AP-7A originate from a survey and plat prepared by the Bureau of Land Management Cadastral Survey in September 22, 2000 for Township 23 and 24 North, Ranges 10 and 10-½ West, of the Willamette Meridian showing the Boundary of the Quinault Indian Reservation.

Courses sited herein are derived from digital data provide by Quinault Indian Nation – Department of Natural Resources, Geographic Information System (GIS) Department. This digital data came from maps and data provided by the Bureau of Land Management, Quinault Indian Nation – Department of Natural Resources, U.S. Forest Service, and Washington State - Department of Natural Resources. Except for said survey, no field surveys have been conducted to aid in the production of this description.

Bearings and distances cited herein are expressed on the Universal Transverse Mercator (UTM) NAD27 Zone 10, Central Meridian 123° W., at AP 1 the Convergence Angle is -0-42-00 and the Scale Factor is 0.999662708952.

Beginning at a Point on the boundary of the Quinault Indian Reservation and designated as AP-1 on said plat; thence southerly along said Boundary to AP-7; thence along the bearing from AP-7 to AP-7A a distance of 22m (72') to a point of intersection with the northern boundary of a 1955 clear-cut; thence leave the reservation boundary and following along the boundary of this 1955,clear-cut in a counterclockwise direction the following 7 courses:

1. North 38°49' West a distance of 56m (183');
2. South 88°17' West a distance of 47m (153');
3. North 85°31' West a distance of 46m (150');
4. South 43°24' West a distance of 89m (293');
5. South 11°21' West a distance of 86m (283');
6. South 50°45' East a distance of 45m (147');
7. South 00°22' East a distance of 141m (464') to a point at the intersection with the boundary of a 1990 clear-cut;

Thence following along the boundary of this 1990 clear-cut in a counterclockwise direction the following 6 courses:

1. South 50°33' West a distance of 32m (106');
2. South 77°00' West a distance of 74m (243');
3. South 83°35' West a distance of 75m (246');
4. South 51°50' East a distance of 125m (410');
5. South 60°13' East a distance of 102m (334');



6. South 83°41' East a distance of 31m (101') to a point having an East Coordinate value of 427870 m¹;

Thence leaving said line South 20°33' West a distance of 67m (220') to a point on the boundary of a 1990 clear-cut; thence following along the boundary of this 1990 clear-cut in a counterclockwise direction the following 3 courses:

1. North 68°11' West a distance of 97m (318');
2. North 52°40' West a distance of 157m (516');
3. South 14°35' West a distance of 59m (194') to a point at the intersection with the boundary of a 2002 clear-cut;

Thence following along the boundary of this 2002 clear-cut in a counterclockwise direction the following 10 courses:

1. South 58°10' West a distance of 22m (71');
2. North 84°48' West a distance of 10m (32');
3. South 55°00' West a distance of 23m (76');
4. South 28°04' West a distance of 11m (35');
5. South 46°34' West a distance of 47m (154');
6. North 07°54' East a distance of 104m (341');
7. North 37°41' West a distance of 28m (92');
8. North 68°33' West a distance of 57m (187');
9. South 48°21' West a distance of 23m (75');
10. South 24°06' West a distance of 56m (184') to a point at the intersection with the boundary of a 1997 clear-cut;

Thence following along the boundary of this 1997 clear-cut in a counterclockwise direction the following 4 courses:

1. North 81°10' West a distance of 26m (86');
2. South 59°40' West a distance of 89m (292');
3. North 51°34' West a distance of 23m (75');
4. North 20°22' West a distance of 55m (182') to a point at the intersection with the boundary of a 1978 clear-cut;

Thence following along the boundary of this 1978 clear-cut in a counterclockwise direction the following 21 courses:

1. North 59°44' East a distance of 29m (95');
2. North 85°30' East a distance of 55m (180');
3. North 04°37' East a distance of 118m (386');
4. North 39°21' West a distance of 66m (217');
5. North 26°33' East a distance of 56m (184');
6. North 12°31' West a distance of 21m (69');
7. North 02°48' East a distance of 20m (67');
8. North 16°23' East a distance of 49m (159');
9. North 24°33' West a distance of 13m (43');
10. North 75°33' West a distance of 20m (66');
11. North 52°06' West a distance of 67m (219');
12. South 71°46' West a distance of 75m (246');

¹ UTM NAD27 Zone 10, in meters



13. South 50°17' West a distance of 39m (126');
14. South 76°08' West a distance of 114m (375');
15. South 64°44' West a distance of 59m (192');
16. South 76°16' West a distance of 44m (145');
17. South 54°26' West a distance of 15m (51');
18. South 35°17' West a distance of 18m (60');
19. South 12°20' West a distance of 76m (249');
20. South 16°27' East a distance of 42m (137');
21. South 34°30' East a distance of 26m (86') to a point at the intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a counterclockwise direction the following 5 courses:

1. South 09°16' East a distance of 29m (95');
2. South 41°55' West a distance of 64m (209');
3. South 25°31' West a distance of 31m (102');
4. South 57°56' West a distance of 24m (80');
5. South 84°52' West a distance of 23m (74') to a point at the intersection with the boundary of a 1981 clear-cut;

Thence following along the boundary of this 1981 clear-cut in a counterclockwise direction the following 27 courses:

1. North 50°29' West a distance of 166m (544');
2. South 89°50' West a distance of 21m (70');
3. South 69°17' West a distance of 33m (109');
4. North 63°24' West a distance of 21m (68');
5. North 33°33' West a distance of 73m (240');
6. North 41°31' East a distance of 106m (348');
7. North 33°52' East a distance of 46m (151');
8. North 39°57' West a distance of 298m (977');
9. North 74°06' West a distance of 16m (54');
10. South 74°05' West a distance of 11m (36');
11. South 48°45' West a distance of 25m (81');
12. South 27°48' West a distance of 46m (149');
13. North 52°07' West a distance of 32m (104');
14. North 81°52' West a distance of 18m (58');
15. South 31°04' West a distance of 23m (75');
16. South 02°11' West a distance of 180m (590');
17. South 55°21' West a distance of 33m (108');
18. South 19°01' East a distance of 52m (170');
19. South 55°10' East a distance of 81m (264');
20. South 75°13' East a distance of 95m (313');
21. South 10°18' East a distance of 38m (125');
22. North 71°33' East a distance of 53m (175');
23. South 61°34' East a distance of 38m (123');
24. South 30°41' West a distance of 52m (170');
25. South 17°56' West a distance of 16m (52');



26. South 07°11' West a distance of 47m (155');
27. South 33°46' West a distance of 19m (63') to a point at the intersection with the boundary of a 1991 clear-cut;

Thence following along the boundary of this 1991 clear-cut in a counterclockwise direction the following 17 courses:

1. South 73°45' West a distance of 13m (42');
2. North 73°57' West a distance of 93m (306');
3. South 15°06' West a distance of 56m (184');
4. South 83°17' West a distance of 61m (200');
5. South 78°01' West a distance of 31m (103');
6. South 67°47' West a distance of 59m (194');
7. South 62°51' West a distance of 217m (713');
8. South 53°17' West a distance of 34m (113');
9. South 42°02' West a distance of 47m (154');
10. South 45°36' East a distance of 55m (181');
11. South 54°21' East a distance of 118m (385');
12. South 20°49' East a distance of 78m (255');
13. South 77°59' East a distance of 166m (545');
14. South 19°10' West a distance of 58m (189');
15. South 83°01' West a distance of 26m (85');
16. North 85°01' West a distance of 35m (114');
17. North 79°09' West a distance of 59m (192') to a point at the intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a counterclockwise direction the following 8 courses:

1. North 48°29' West a distance of 93m (306');
2. South 82°34' West a distance of 43m (141');
3. North 86°03' West a distance of 66m (215');
4. North 72°38' West a distance of 103m (338');
5. North 21°43' West a distance of 68m (222');
6. North 72°30' West a distance of 17m (57');
7. South 39°20' West a distance of 211m (692');
8. South 16°11' West a distance of 64m (212') to a point at the intersection with the boundary of a 1961 clear-cut;

Thence following along the boundary of this 1961 clear-cut in a counterclockwise direction the following 13 courses:

1. South 11°39' West a distance of 103m (337');
2. South 07°07' East a distance of 59m (194');
3. North 62°47' West a distance of 48m (159');
4. North 21°47' West a distance of 45m (147');
5. North 25°33' West a distance of 102m (334');
6. North 30°45' West a distance of 216m (708');
7. North 40°57' West a distance of 86m (282');
8. North 83°32' West a distance of 21m (68');
9. South 54°11' West a distance of 38m (123');



10. South 29°53' West a distance of 45m (147');
11. South 81°44' West a distance of 36m (117');
12. South 36°27' West a distance of 62m (202');
13. North 89°01' West a distance of 39m (129') to a point at the intersection with the boundary of a 1982 clear-cut;

Thence following along the boundary of this 1982 clear-cut in a counterclockwise direction the following course:

1. North 03°50' East a distance of 304m (997') to a point at the intersection with the boundary of a 1972 clear-cut;

Thence following along the boundary of this 1972 clear-cut in a counterclockwise direction the following 34 courses:

1. North 04°24' West a distance of 120m (393');
2. South 85°35' East a distance of 20m (65');
3. South 30°22' East a distance of 25m (82');
4. North 54°57' East a distance of 23m (75');
5. North 07°29' East a distance of 54m (177');
6. North 74°03' West a distance of 51m (167');
7. North 06°52' West a distance of 151m (496');
8. North 71°57' West a distance of 140m (458');
9. North 11°30' West a distance of 29m (94');
10. South 81°06' West a distance of 19m (62');
11. South 58°01' West a distance of 21m (68');
12. North 72°07' West a distance of 89m (294');
13. North 01°47' West a distance of 15m (49');
14. North 25°28' East a distance of 43m (140');
15. North 12°05' East a distance of 47m (154');
16. North 37°43' East a distance of 32m (104');
17. North 30°53' East a distance of 36m (117');
18. North 16°03' East a distance of 32m (104');
19. North 07°53' East a distance of 35m (114');
20. North 47°44' East a distance of 57m (188');
21. North 26°39' East a distance of 24m (77');
22. North 08°25' East a distance of 20m (66');
23. North 05°42' West a distance of 48m (158');
24. North 82°28' West a distance of 39m (127');
25. South 79°09' West a distance of 19m (63');
26. South 54°19' West a distance of 23m (75');
27. South 25°41' West a distance of 138m (42');
28. South 01°57' West a distance of 51m (167');
29. South 22°00' West a distance of 95m (311');
30. South 52°55' West a distance of 34m (112');
31. South 29°50' West a distance of 20m (64');
32. South 01°38' West a distance of 29m (94');
33. North 86°42' West a distance of 18m (58');



34. North 48°40' West a distance of 28m (93') to a point at the intersection with the boundary of a 1990 clear-cut;

Thence following along the boundary of this 1990 clear-cut in a counterclockwise direction the following 20 courses:

1. North 02°04' East a distance of 46m (150');
2. North 17°26' West a distance of 77m (253');
3. North 06°03' West a distance of 64m (210');
4. North 37°36' West a distance of 55m (181');
5. North 07°57' West a distance of 48m (159');
6. North 06°07' East a distance of 37m (122');
7. North 14°29' West a distance of 20m (65');
8. North 71°06' West a distance of 10m (32');
9. South 22°29' West a distance of 85m (279');
10. South 12°45' West a distance of 84m (277');
11. South 16°22' East a distance of 44m (144');
12. South 00°25' East a distance of 35m (115');
13. South 19°40' West a distance of 14m (45');
14. North 75°40' West a distance of 28m (90');
15. North 59°14' West a distance of 36m (119');
16. North 11°44' East a distance of 166m (545');
17. North 14°02' West a distance of 21m (69');
18. North 72°54' West a distance of 33m (110');
19. North 84°41' West a distance of 48m (156');
20. South 83°14' West a distance of 38m (126') to a point at the intersection with the boundary of a 1983 clear-cut;

Thence following along the boundary of this 1983 clear-cut in a counterclockwise direction the following 36 courses:

1. North 10°37' East a distance of 34m (110');
2. North 54°19' West a distance of 24m (78');
3. North 71°48' West a distance of 58m (192');
4. South 85°29' West a distance of 39m (126');
5. North 33°08' West a distance of 28m (91');
6. North 57°28' East a distance of 45m (148');
7. North 33°46' East a distance of 49m (160');
8. North 49°46' East a distance of 48m (158');
9. North 20°06' East a distance of 249m (816');
10. North 21°42' West a distance of 41m (133');
11. North 53°04' West a distance of 67m (220');
12. North 74°37' West a distance of 54m (179');
13. North 65°03' West a distance of 31m (102');
14. North 49°45' West a distance of 56m (184');
15. North 43°42' West a distance of 62m (203');
16. North 78°34' West a distance of 43m (141');
17. South 03°18' West a distance of 48m (156');
18. South 52°20' West a distance of 40m (132');



19. North 81°24' West a distance of 40m (132');
20. North 52°58' West a distance of 44m (144');
21. North 44°33' West a distance of 49m (161');
22. South 66°12' West a distance of 17m (57');
23. South 09°45' West a distance of 39m (126');
24. South 09°19' East a distance of 121m (396');
25. South 43°34' West a distance of 35m (113');
26. North 87°19' West a distance of 64m (211');
27. South 58°46' West a distance of 46m (152');
28. South 00°17' East a distance of 62m (203');
29. South 08°36' East a distance of 203m (665');
30. South 45°31' East a distance of 17m (56');
31. South 22°22' East a distance of 69m (227');
32. South 19°22' West a distance of 38m (125');
33. South 23°22' East a distance of 65m (214');
34. South 05°27' East a distance of 74m (242');
35. South 29°42' East a distance of 52m (172');
36. South 15°48' West a distance of 25m (84') to a point at the intersection with the boundary of a 1951 clear-cut;

Thence following along the boundary of this 1951 clear-cut in a counterclockwise direction the following 13 courses:

1. South 79°15' West a distance of 16m (53');
2. North 60°59' West a distance of 154m (504');
3. South 57°44' West a distance of 65m (212');
4. North 85°11' West a distance of 72m (235');
5. North 57°40' West a distance of 33m (107');
6. North 87°40' West a distance of 62m (203');
7. South 33°07' West a distance of 62m (203');
8. South 16°42' East a distance of 77m (253');
9. South 03°00' East a distance of 83m (271');
10. South 34°37' West a distance of 38m (126');
11. South 52°57' West a distance of 37m (120');
12. South 73°29' West a distance of 32m (104');
13. North 82°32' West a distance of 27m (89') to a point at the intersection with the boundary of a 1978 clear-cut;

Thence following along the boundary of this 1978 clear-cut in a counterclockwise direction the following 3 courses:

1. North 06°13' West a distance of 30m (97');
2. North 28°45' West a distance of 200m (655');
3. North 35°52' West a distance of 40m (131') to a point at the intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a counterclockwise direction the following 2 courses:

1. North 35°52' West a distance of 42m (138');



2. North 24°23' West a distance of 125m (410') to a point at the intersection with the boundary of a 1968 clear-cut;

Thence following along the boundary of this 1968 clear-cut in a counterclockwise direction the following 4 courses:

1. North 24°23' West a distance of 18m (59');
2. North 24°48' East a distance of 89m (293');
3. North 36°41' East a distance of 116m (381');
4. North 09°36' East a distance of 202m (662') to a point at the intersection with the boundary of a 1987 clear-cut;

Thence following along the boundary of this 1987 clear-cut in a counterclockwise direction the following 11 courses:

1. North 51°45' East a distance of 87m (286');
2. North 88°28' East a distance of 208m (681');
3. North 57°37' East a distance of 48m (156');
4. North 31°02' East a distance of 121m (396');
5. North 58°56' East a distance of 70m (231');
6. North 14°02' East a distance of 35m (115');
7. North 65°52' West a distance of 94m (310');
8. North 47°37' West a distance of 54m (178');
9. North 27°00' West a distance of 88m (290');
10. North 82°10' West a distance of 40m (133');
11. North 42°48' West a distance of 42m (139');

Thence North 33°35' East a distance of 33m (109') more or less to the boundary of the Quinault Indian Reservation; thence easterly along said boundary to the Point of Beginning.

EXCEPTING THEREFROM, that portion of the above described tract of land that lay easterly of the following line:

Commencing at a point on boundary of the Quinault Indian Reservation that is designated AP-6B on said Bureau of Land Management Cadastral Survey plat; thence along the course from AP-6B to AP-6A a distance of 12m (39') to the southern most point of a 1955 clear-cut and the Point of Beginning. thence following the boundary of a 1955 clear-cut in a counterclockwise direction the following 14 courses:

1. North 83°06' West a distance of 42m (137');
2. North 60°52' West a distance of 46m (152');
3. North 00°26' East a distance of 93m (307');
4. North 36°20' East a distance of 162m (532');
5. North 06°12' East a distance of 45m (148');
6. North 62°50' East a distance of 79m (260');
7. North 01°09' West a distance of 59m (194');
8. North 40°51' East a distance of 30m (100');
9. South 72°47' East a distance of 62m (203');
10. North 13°47' East a distance of 50m (164');
11. North 55°23' East a distance of 31m (103');
12. North 22°48' East a distance of 90m (296');



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13. North 48°16' East a distance of 91m (298');
14. North 02°50' East a distance of 23m (76') to said boundary.

ALSO EXCEPTING THEREFROM, That portion of the above described tract of land that lies within the template of a road once known as Olympia National Forest Road 2140.

ALSO EXCEPTING THEREFROM, That portion of the above described tract of land that lies between the lines of mean high water of the Middle Fork of the Salmon River for that segment of said river beginning at its confluence with the South Fork of the Salmon River and ending at the confluence with a tributary creek that flows westerly and has a LLID² designation of 1239638475189.

ALSO EXCEPTING THEREFROM, That portion of the above described tract of land that lies between the lines of mean high water of a tributary creek to the Middle Fork of the Salmon River having a LLID³ designation of 1239638475189. This creek is also depicted on the cited map in Public Law 100-638 as one of the boundary components of "Northern Boundary Expansion Area".

Tract 1 of Easement Block 1 contains a net of 820 acres more or less.

² Lat/Long Identifier

³ Lat/Long Identifier



ATTACHMENT B, EXHIBIT 2

OLD GROWTH TIMBER TRACT 2 OF EASEMENT BLOCK 1

The following described easement tract is contained all within Townships 23 and 24 North, Ranges 10 and 10-½ West, Willamette Meridian and within those lands known as the "Northern Boundary Expansion Area" conveyed to the Quinault Indian Nation in November 1988 by Public Law 100-638.

Courses sited herein are derived from digital data provide by Quinault Indian Nation – Department of Natural Resources, Geographic Information System (GIS) Department. This digital data came from maps and data provided by the Bureau of Land Management, Quinault Indian Nation – Department of Natural Resources, U.S. Forest Service, and Washington State - Department of Natural Resources. No field surveys have been conducted to aid in the production of this description.

Bearings and distances cited herein are expressed on the Universal Transverse Mercator (UTM) NAD27 Zone 10, Central Meridian 123° W., at the Point of Beginning the Convergence angle is -0-45-59 and the Scale factor is 0.999675197225.

Beginning at the point where the mark of Mean High Water on the right bank of the South Fork of the Salmon River meets the mark of Mean High Water on the left bank of the Middle Fork of the Salmon River; thence southeasterly up the right bank of South Fork of the Salmon River along the mark of Mean High Water the following 5 courses:

1. South 08°31' East a distance of 58m (191');
2. South 70°48' East a distance of 54m (177');
3. South 31°29' East a distance of 61m (201');
4. South 51°10' East a distance of 133m (436');
5. South 85°29' East a distance of 73m (239');

Thence South 30°57' East leaving said mark and crossing the riparian zone a distance of 45m (146') more or less to a point on the boundary of a 1959 clear-cut. thence southerly, easterly, and southerly along this 1959 clear-cut the following 14 courses:

1. South 71°36' East a distance of 53m (173');
2. South 45°00' East a distance of 25m (81');
3. South 23°14' East a distance of 33m (109');
4. South 60°17' East a distance of 60m (198');
5. North 86°34' East a distance of 66m (216');
6. South 64°57' East a distance of 63m (205');
7. South 06°24' East a distance of 105m (345');
8. South 31°58' East a distance of 65m (214');
9. South 46°38' East a distance of 47m (155');
10. South 01°38' West a distance of 67m (219');
11. South 88°18' East a distance of 76m (248');
12. South 48°28' East a distance of 38m (123');
13. South 31°46' East a distance of 169m (554');



14. South 50°54' East a distance of 86m (282') to a point having a north coordinate value of 5262905 m¹

Thence North 54°45' East a distance of 46m (151') to the mark of Mean High Water on the right bank of the South Fork of the Salmon River; thence easterly and southerly up the South Fork of the Salmon River along the mark of Mean High Water on the right bank of the South Fork of the Salmon River the following 12 courses:

1. South 65°43' East a distance of 52m (172');
2. South 51°32' East a distance of 100m (330');
3. South 40°53' East a distance of 36m (118');
4. South 20°36' East a distance of 22m (73');
5. South 03°05' West a distance of 28m (91');
6. South 07°43' West a distance of 75m (245');
7. South 20°15' West a distance of 70m (230');
8. South 01°40' East a distance of 42m (139');
9. South 21°24' East a distance of 53m (174');
10. South 40°33' West a distance of 75m (245');
11. South 04°46' West a distance of 35m (114');
12. South 29°26' East a distance of 34m (113') to a point where a major creek that flows northwesterly enters said river²;

Thence leaving said mark South 46°55' East a distance of 159m (521') more or less to the most northern point of a 1966 clear-cut; thence following along the boundary of this 1966 clear-cut in a clockwise direction the following 23 courses:

1. South 65°49' East a distance of 89m (291');
2. South 24°42' East a distance of 85m (279');
3. South 58°01' East a distance of 118m (388');
4. North 06°13' West a distance of 24m (78');
5. North 50°16' East a distance of 13m (41');
6. South 77°05' East a distance of 29m (95');
7. South 37°37' East a distance of 15m (50');
8. South 74°05' East a distance of 135m (442');
9. South 37°43' East a distance of 66m (218');
10. South 26°15' East a distance of 64m (209');
11. South 36°14' East a distance of 69m (228');
12. South 83°39' East a distance of 40m (133');
13. South 66°58' East a distance of 52m (172');
14. South 27°27' East a distance of 20m (65');
15. South 00°46' West a distance of 30m (98');
16. South 34°43' West a distance of 28m (92');
17. South 66°11' West a distance of 41m (135');
18. South 47°51' West a distance of 66m (215');
19. South 10°29' East a distance of 63m (207');
20. South 37°51' East a distance of 58m (192');
21. South 29°52' West a distance of 57m (186');

¹ UTM NAD 27 Zone 10

² This creek has a Lat/Long Identifier number of 1240248475120



22. South 55°11' West a distance of 58m (190');
23. South 87°32' West a distance of 12m (38') to a point at the intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a clockwise direction the following 8 courses:

1. South 37°46' West a distance of 56m (185');
2. South 75°51' East a distance of 41m (134');
3. North 79°33' East a distance of 39m (127');
4. South 64°08' East a distance of 88m (290');
5. South 83°00' East a distance of 37m (121');
6. South 50°22' East a distance of 17m (57');
7. South 40°20' West a distance of 11m (37');
8. South 71°40' West a distance of 33m (110') to a point having a north coordinate value of 5261477m³

Thence leaving said boundary South 37°16' East across a draw a distance of 64m (209') more or less to the boundary of 1970 clear-cut; thence following along the boundary of this 1970 clear-cut in a clockwise direction the following 7 courses:

1. South 72°51' East a distance of 93m (305');
2. North 88°47' East a distance of 187m (615');
3. South 59°19' East a distance of 26m (87');
4. South 02°43' East a distance of 151m (494');
5. South 19°36' West a distance of 96m (314');
6. South 05°31' West a distance of 103m (338');
7. South 07°40' East a distance of 95m (312') to a point of intersection with the boundary of a 1983 clear-cut;

Thence following along the boundary of this 1983 clear-cut in a clockwise direction the following 5 courses:

1. South 07°40' East a distance of 46m (151')
2. South 36°19' East a distance of 69m (227');
3. South 36°57' West a distance of 91m (298');
4. South 22°25' East a distance of 140m (458');
5. South 05°03' East a distance of 29m (94') to a point of intersection with the boundary of a 1976 clear-cut;

Thence following along the boundary of this 1976 clear-cut in a clockwise direction the following course:

1. South 84°45' East a distance of 31m (103') to a point of intersection with the boundary of a 1953 clear-cut;

Thence northerly and easterly along the boundary of this 1953 clear-cut the following 6 courses:

1. North 00°00' East a distance of 55m (181');
2. North 89°53' East a distance of 53m (175');
3. South 30°47' East a distance of 102m (336');
4. South 81°20' East a distance of 44m (144');
5. North 89°54' East a distance of 77m (252');

³ UTM NAD 27 Zone 10



6. North 75°44' East a distance of 134m (438') to a point of intersection with the boundary of a 1992 clear-cut;

Thence following along the boundary of this 1992 clear-cut in a clockwise direction the following 5 courses:

1. North 33°41' West a distance of 55m (181');
2. North 63°36' West a distance of 110m (360');
3. North 30°14' East a distance of 96m (314');
4. North 14°30' West a distance of 81m (266');
5. North 40°07' East a distance of 110m (360') to a point of intersection with the boundary of a 1965 clear-cut;

Thence following along the boundary of this 1965 clear-cut in a clockwise direction the following 8 courses:

1. North 25°51' West a distance of 29m (96');
2. North 08°23' West a distance of 66m (216');
3. North 06°44' East a distance of 106m (347');
4. North 39°56' West a distance of 44m (144');
5. North 07°45' West a distance of 32m (105');
6. North 13°54' East a distance of 56m (183');
7. North 69°30' East a distance of 263m (862');
8. South 84°21' East a distance of 236m (775') to a point of intersection with the boundary of a 1990 clear-cut;

Thence following along the boundary of this 1990 clear-cut in a clockwise direction the following 6 courses:

1. North 00°52' East a distance of 396m (1299');
2. North 35°33' East a distance of 50m (165');
3. South 82°57' East a distance of 73m (241');
4. South 72°16' East a distance of 57m (186');
5. North 76°22' East a distance of 35m (116');
6. South 86°12' East a distance of 114m (375') to a point of intersection with an un-named stream;

Thence leaving said clear-cut and traversing down the thread of this un-named stream⁴ which is represented by the following 15 courses:

1. North 63°06' West a distance of 61m (200');
2. North 80°00' West a distance of 124m (406');
3. South 78°46' West a distance of 47m (155');
4. South 86°18' West a distance of 26m (84');
5. North 82°24' West a distance of 41m (135');
6. North 74°35' West a distance of 55m (180');
7. North 59°52' West a distance of 63m (207');
8. North 72°15' West a distance of 36m (117');
9. North 52°07' West a distance of 47m (153');
10. North 70°01' West a distance of 32m (104');
11. North 63°26' West a distance of 122m (399');

⁴ This creek has a Lat/Long Identifier number of 1240248475120



12. North 76°57' West a distance of 114m (376');
13. South 65°09' West a distance of 81m (266');
14. North 79°17' West a distance of 51m (168');
15. North 58°54' West a distance of 43m (140') to that point where this stream enters a 1986 clear-cut;

Thence following along the boundary of this 1986 clear-cut in a clockwise direction the following 9 courses:

1. South 25°27' West a distance of 216m (707');
2. South 89°48' West a distance of 170m (557');
3. North 65°05' West a distance of 47m (153');
4. North 11°54' West a distance of 165m (541');
5. North 22°40' West a distance of 187m (613');
6. North 14°46' West a distance of 58m (192');
7. North 58°10' East a distance of 163m (534');
8. North 32°13' East a distance of 129m (422');
9. North 40°42' East a distance of 59m (195') to a point of intersection with the boundary of a 1951 clear-cut;

Thence following along the boundary of this 1951 clear-cut in a clockwise direction in a clockwise direction the following 8 courses:

1. North 30°28' West a distance of 109m (357');
2. North 16°51' West a distance of 31m (103');
3. North 28°01' East a distance of 15m (50');
4. North 68°39' East a distance of 37m (122');
5. North 30°22' East a distance of 14m (46');
6. North 49°21' West a distance of 42m (139');
7. North 05°24' West a distance of 36m (119');
8. North 23°51' East a distance of 29m (95') to a point of intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a clockwise direction the following 4 courses:

1. North 69°29' West a distance of 53m (173');
2. South 34°43' West a distance of 60m (196');
3. North 72°24' West a distance of 86m (282');
4. South 52°22' West a distance of 66m (216') to a point of intersection with the boundary of a 1978 clear-cut;

Thence following along the boundary of this 1978 clear-cut in a clockwise direction the following 9 courses:

1. South 24°16' West a distance of 29m (95');
2. South 57°51' West a distance of 58m (190');
3. South 53°39' West a distance of 392m (1287');
4. South 61°05' West a distance of 168m (550');
5. North 48°59' West a distance of 158m (517');
6. North 72°41' West a distance of 84m (276');
7. North 49°17' West a distance of 67m (221');
8. North 15°40' West a distance of 86m (283');



9. North 53°15' East a distance of 52m (172') to a point of intersection with the boundary of a 1984 clear-cut;

Thence following along the boundary of this 1984 clear-cut in a clockwise direction the following 14 courses:

1. North 12°20' East a distance of 98m (321');
2. North 02°34' East a distance of 112m (366');
3. North 13°56' West a distance of 166m (544');
4. North 55°05' East a distance of 23m (75');
5. South 68°58' East a distance of 178m (585');
6. South 78°58' East a distance of 196m (644');
7. North 34°31' East a distance of 87m (285');
8. North 84°26' East a distance of 57m (186');
9. South 25°40' East a distance of 79m (258');
10. South 79°45' East a distance of 62m (203');
11. North 34°52' East a distance of 172m (566');
12. South 65°15' East a distance of 75m (247');
13. North 52°27' East a distance of 27m (89');
14. North 02°45' East a distance of 97m (317') to a point of intersection with the boundary of a 1968 clear-cut;

Thence following along the boundary of this 1968 clear-cut in a clockwise direction the following 6 courses:

1. South 88°15' West a distance of 82m (269');
2. North 42°45' West a distance of 116m (381');
3. North 50°57' West a distance of 99m (325');
4. North 31°55' West a distance of 46m (152');
5. North 17°38' East a distance of 33m (109');
6. North 23°16' West a distance of 101m (332') to a point of intersection with the boundary of a 1983 clear-cut;

Thence following along the boundary of this 1983 clear-cut in a clockwise direction the following 26 courses:

1. North 82°09' West a distance of 143m (469');
2. South 72°32' West a distance of 253m (831');
3. South 37°43' West a distance of 66m (217');
4. South 28°34' East a distance of 33m (110');
5. South 34°53' West a distance of 15m (49');
6. South 86°30' West a distance of 31m (100');
7. North 49°21' West a distance of 37m (123');
8. South 49°30' West a distance of 26m (86');
9. South 39°59' East a distance of 43m (141');
10. South 33°53' West a distance of 7m (24');
11. North 81°50' West a distance of 102m (335');
12. South 51°54' West a distance of 148m (487');
13. North 20°44' West a distance of 53m (175');
14. North 59°20' West a distance of 65m (212');
15. North 42°11' West a distance of 165m (542');



16. North 12°25' West a distance of 32m (106');
17. North 56°09' West a distance of 50m (165');
18. North 24°40' West a distance of 71m (233');
19. North 51°32' West a distance of 110m (361');
20. North 27°22' East a distance of 78m (257');
21. North 02°41' West a distance of 30m (98');
22. North 32°47' East a distance of 133m (437');
23. North 53°03' East a distance of 141m (463');
24. North 04°23' West a distance of 76m (249');
25. North 40°46' East a distance of 55m (180');
26. North 61°45' East a distance of 67m (221') to a point of intersection with the boundary of a 1987 clear-cut;

Thence following along the boundary of this 1987 clear-cut in a clockwise direction the following 23 courses:

1. North 18°47' East a distance of 60m (197');
2. North 22°56' West a distance of 66m (217');
3. North 58°47' West a distance of 49m (161');
4. South 89°23' West a distance of 139m (456');
5. North 81°44' West a distance of 88m (288');
6. South 68°41' West a distance of 73m (240');
7. South 46°59' West a distance of 38m (124');
8. South 78°01' West a distance of 54m (176');
9. North 55°56' West a distance of 52m (170');
10. North 84°43' West a distance of 38m (125');
11. South 66°30' West a distance of 44m (144');
12. North 62°55' West a distance of 41m (133');
13. North 26°02' West a distance of 77m (252');
14. North 12°54' East a distance of 42m (139');
15. North 69°10' East a distance of 64m (210');
16. North 49°34' East a distance of 107m (352');
17. EAST a distance of 54m (176');
18. North 68°40' East a distance of 66m (217');
19. North 30°56' East a distance of 38m (126');
20. South 85°08' East a distance of 106m (348');
21. North 85°53' East a distance of 188m (618');
22. South 71°21' East a distance of 63m (205');
23. North 85°00' East a distance of 35m (113') to a point of intersection with the boundary of a 1994 clear-cut;

Thence following along the boundary of this 1994 clear-cut in a clockwise direction the following 8 courses:

1. North 39°33' East a distance of 54m (179');
2. North 65°49' East a distance of 42m (138');
3. South 55°16' East a distance of 166m (544');
4. North 75°02' East a distance of 79m (258');
5. North 77°24' East a distance of 131m (429');



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6. South 79°20' East a distance of 83m (273');
7. South 61°56' East a distance of 95m (310');
8. South 43°45' East a distance of 44m (145') to a point of intersection with the boundary of a 1983 clear-cut;

Thence following along the boundary of this 1983 clear-cut in a clockwise direction the following 2 courses:

1. South 63°01' East a distance of 195m (641');
2. South 28°05' East a distance of 26m (85') to a point of intersection with the boundary of a 1987 clear-cut;

Thence following along the boundary of this 1987 clear-cut in a clockwise direction the following 7 courses:

1. South 28°05' East a distance of 62m (203');
2. South 66°57' East a distance of 56m (184');
3. North 78°08' East a distance of 32m (104');
4. South 87°22' East a distance of 131m (430');
5. North 50°53' East a distance of 63m (207');
6. South 67°01' East a distance of 87m (287');
7. South 28°46' East a distance of 75m (247');

Thence North 45° East a distance of 12m (39') to the mark of Mean High Water on the Left Bank of the Middle Fork of the Salmon River; thence westerly along said mark to the Point of Beginning.

EXCEPTING THEREFROM, that portion of the above described land that lay within a 20m wide strip of land, 10m on each side of centerline, running the length of and is centered along the apparent centerline of said road numbered 2191-100.

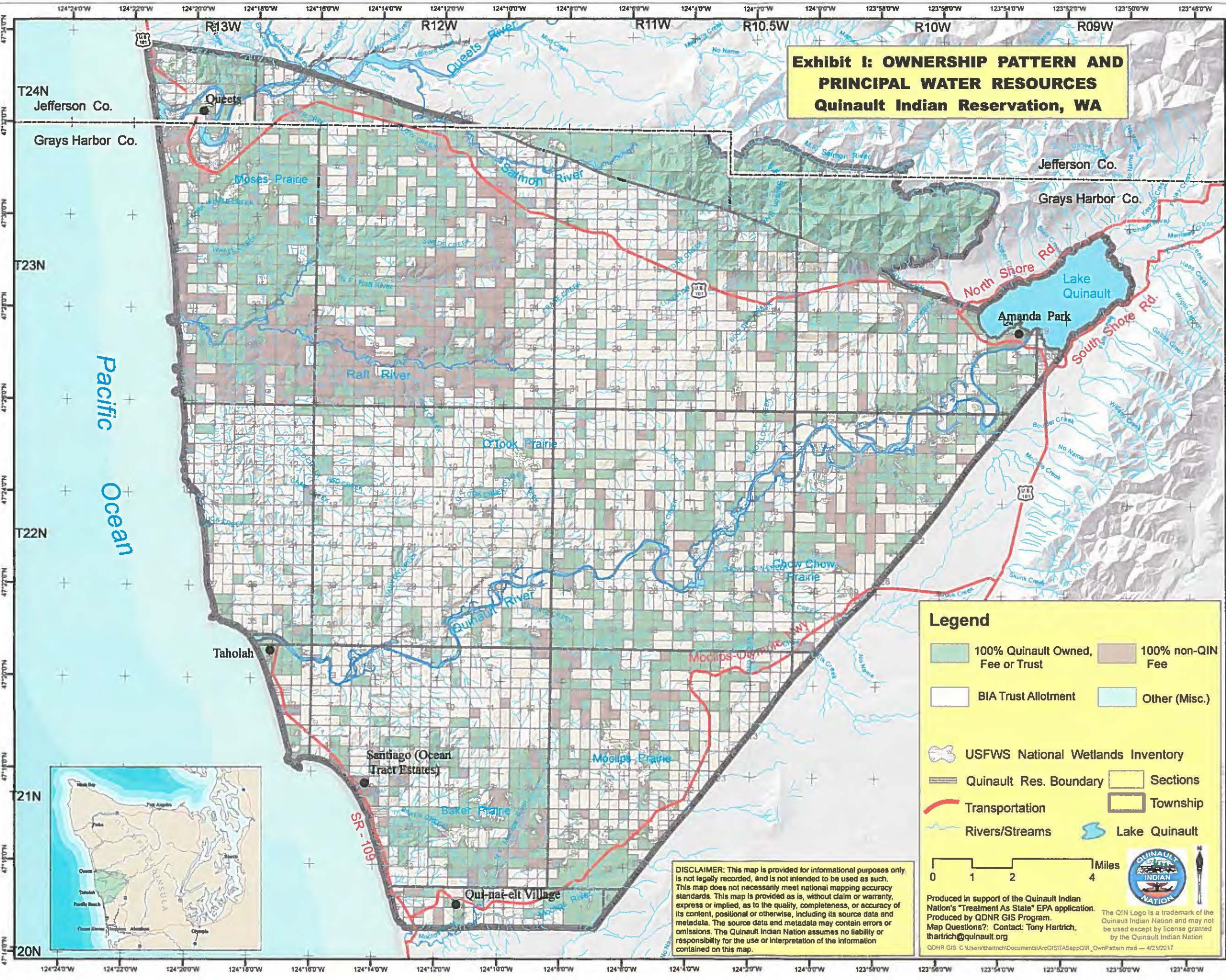
ALSO EXCEPTING THEREFROM, That portion of the above described block of land that lies between the lines of Mean High Water of the South Fork of the Salmon River.

Tract 2 of Easement Block 1 contains a net of 555 acres more or less.



EXHIBIT I

**Exhibit I: OWNERSHIP PATTERN AND PRINCIPAL WATER RESOURCES
Quinault Indian Reservation, WA**



Legend

	100% Quinault Owned, Fee or Trust		100% non-QIN Fee
	BIA Trust Allotment		Other (Misc.)
	USFWS National Wetlands Inventory		
	Quinault Res. Boundary		
	Transportation		
	Rivers/Streams		
	Sections		
	Township		
	Lake Quinault		

0 1 2 4 Miles

Produced in support of the Quinault Indian Nation's "Treatment As State" EPA application. Produced by QDNR GIS Program. Map Questions?: Contact: Tony Hartrich, thartrich@quinault.org

QDNR GIS C:\Users\thartrich\Documents\ArcGIS\TASapp\QIR_OwnPattern.mxd -- 4/21/2017

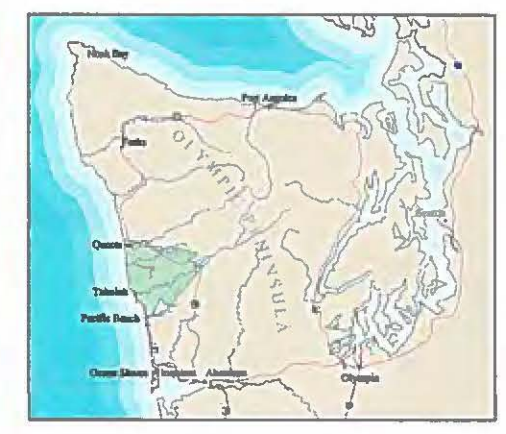
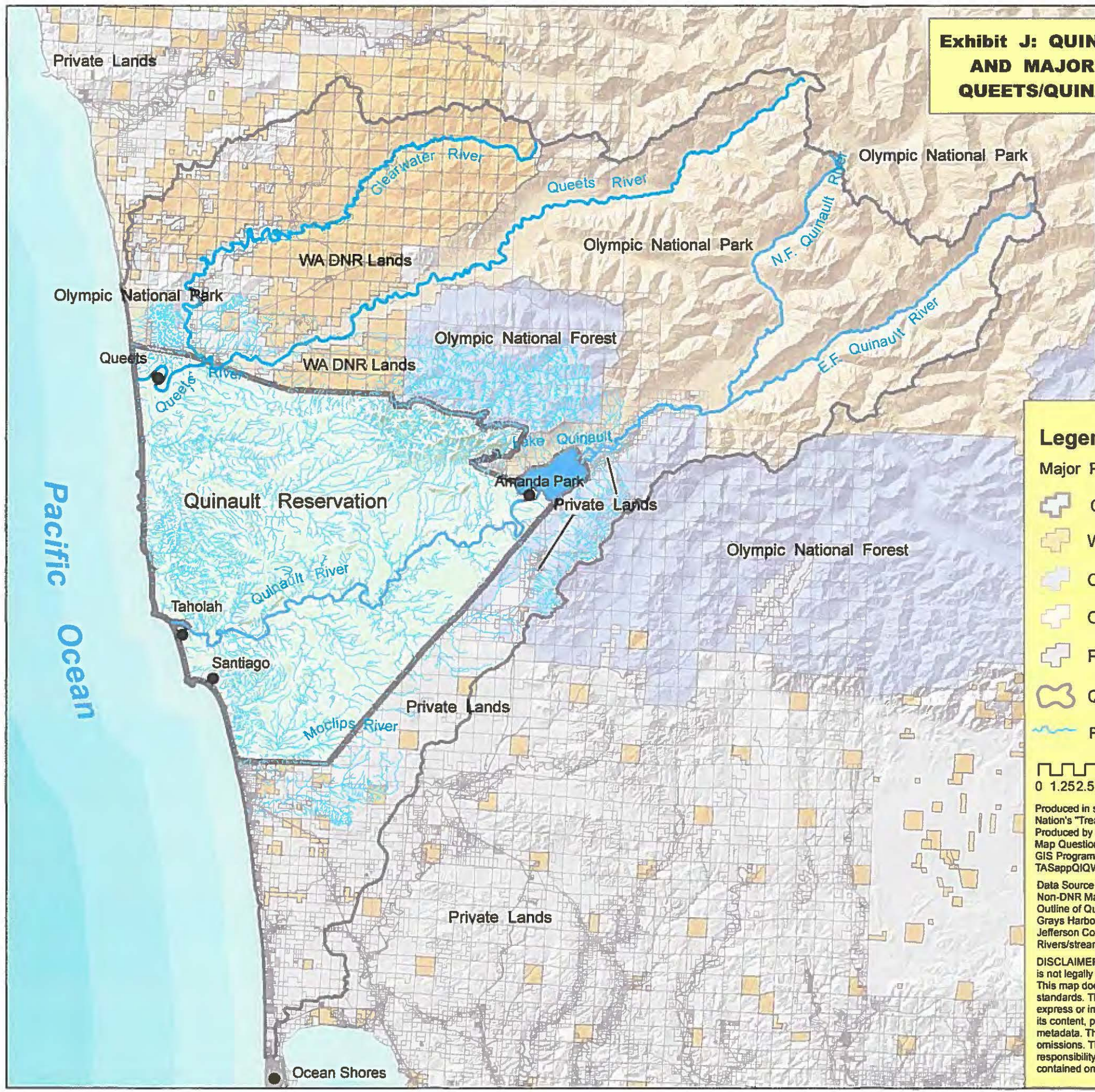
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EXHIBIT J

Exhibit J: QUINAULT INDIAN RESERVATION AND MAJOR PUBLIC LANDS IN THE QUEETS/QUINAULT RIVERS WATERSHED



Legend

- Quinault Reservation
- WA DNR Land Holdings
- Olympic National Forest
- Olympic National Park
- Private Lands
- Queets-Quinault Watershed Boundary
- Rivers/Streams
- Lake Quinault

0 1.25 2.5 5 7.5 10 Miles

Produced in support of the Quinault Indian Nation's "Treatment As State" EPA application.
 Produced by QDNR GIS Program.
 Map Questions? Contact: Tony Hartrich, GIS Program Mgr., thartrich@quinault.org
 TASappQIQWSwMPLv1.mxd, 04/11/2017

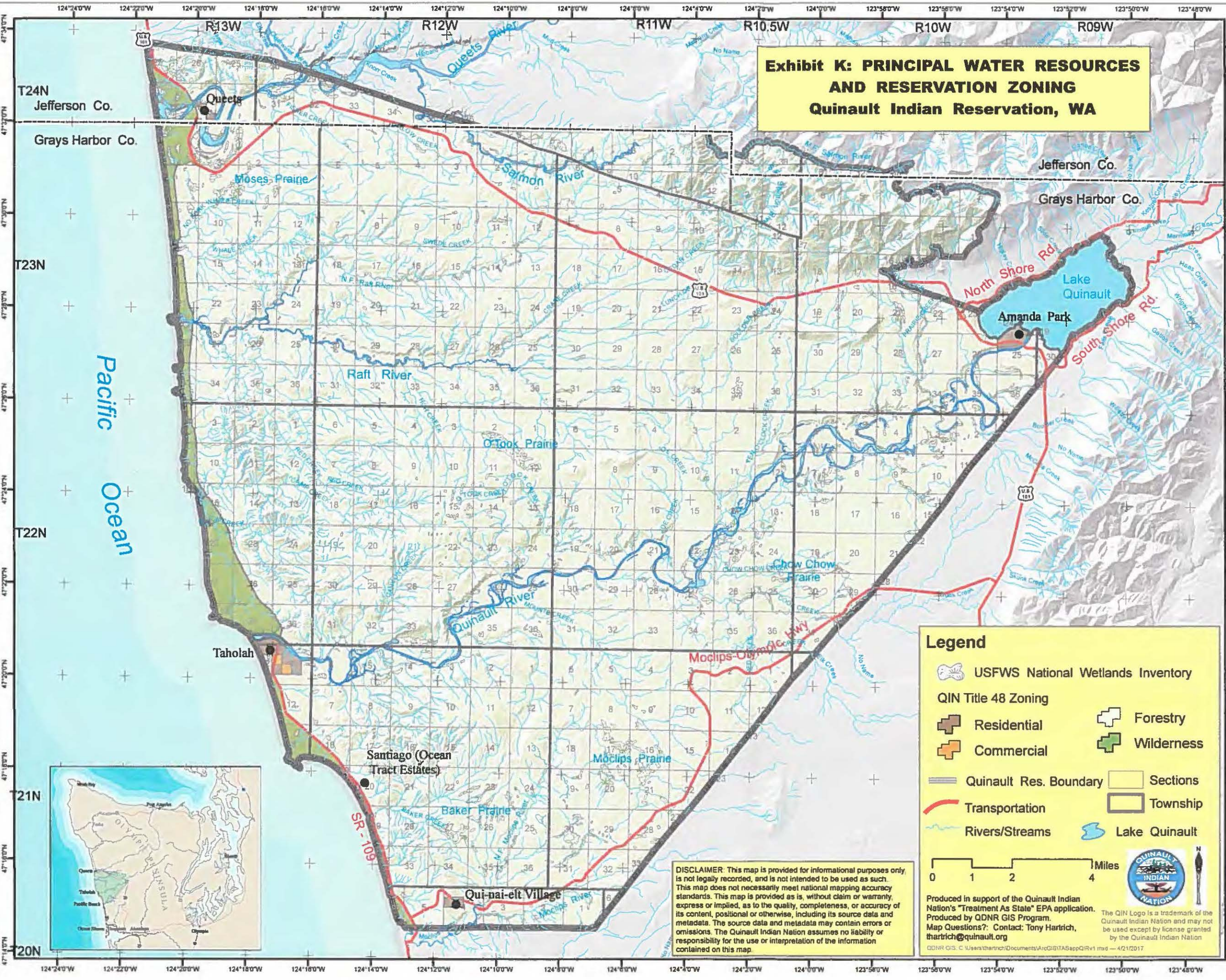
The QIN Logo is a trademark of the Quinault Indian Nation and may not be used except by license granted by the Quinault Indian Nation

Data Source Notes
 Non-DNR Major Public Lands & DNR Land Holdings: www.wadnr.wa.gov/GIS
 Outline of Quinault Reservation: Quinault Indian Nation, QDNR - GIS Program
 Grays Harbor Co parcel data: www.co.grays-harbor.wa.us
 Jefferson County parcel data: www.jefferson.wa.us
 Rivers/streams shown: USGS National Hydro Dataset

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EXHIBIT K

Exhibit K: PRINCIPAL WATER RESOURCES AND RESERVATION ZONING
Quinault Indian Reservation, WA



Legend

- USFWS National Wetlands Inventory
- QIN Title 48 Zoning**
- Residential
- Commercial
- Forestry
- Wilderness
- Quinault Res. Boundary
- Transportation
- Rivers/Streams
- Sections
- Township
- Lake Quinault

0 1 2 4 Miles

Produced in support of the Quinault Indian Nation's "Treatment As State" EPA application. Produced by QDNR GIS Program. Map Questions?: Contact: Tony Hartrich, thartrich@quinault.org

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QDNR GIS. C:\Users\thartrich\Documents\ArcGIS\TASappQRV1.mxd -- 4/21/2017

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EXHIBIT L



OFFICE OF THE ATTORNEY GENERAL

136 Cuitan Street
PO Box 613
Taholah, WA 98587
Phone: 360-276-8215 ext. 220
Fax: 360-276-8127
quinaultindiannation.com

Lori Bruner, Acting Attorney General
Karen Allston, Senior Assistant Attorney General
Peter Crocker, Assistant Attorney General
Marilyn Johnson, Legal Secretary II

TO: Environmental Protection Agency

FROM: Karen Allston, Senior Assistant Attorney General

RE: Legal Explanation of QIN Assertion of Clean Water Act Authority by Quinault Indian Nation; Supplemental Explanation of Current Legal Dispute

DATE: April 20, 2017

I. Legal Explanation of QIN Assertion of Clean Water Act Authority by Quinault Indian Nation.

The Quinault Indian Nation (QIN) Office of Attorney General provides the following in support of the QIN's assertion of the establishment of the Quinault Indian Reservation and describing the basis of the QIN's assertion of authority:

The Quinault Indian Reservation was authorized by the Treaty of Olympia (signed on the Qui-nai-elt River July 1, 1855, signed January 25, 1856, by Governor Stevens, ratified by Congress March 8, 1859, proclaimed law April 11, 1859) (attached as Exhibit E), and specifically described in the Executive Order dated November 4, 1873, signed by President U.S. Grant, provided in Section 3 above. Further, the North Boundary Area of the Quinault Indian Reservation was added in 1988 by Act of Congress (P.L. 100-638), and is described in Grant Deed of Conservation Easement (recorded in 2006 and attached as Exhibit G to Application for Treatment in the Same Manner as a State ["TAS"]).

In addition to the Treaty of Olympia (1856) acknowledging the Quinault Indian Nation as a governmental authority, the QIN's Constitution (1975) and extensive codes demonstrate its exercise of authority in general over the Quinault Indian Reservation as described in Section 3 of the QIN's TAS Application.

The basis for the QIN's assertion of authority under this application is the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation contained in section 518 of the Clean Water Act. This authority is described in the U.S. Environmental Protection Agency's final interpretive rule, Revised Interpretation of Clean Water Act Tribal Provision, 81 FR 30183, May 16, 2016.

There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress as described in this application.

II. Current Legal Dispute About Ownership of Lake Quinault Likely to Conclude in QIN's Favor.

In 2015, a small group of property owners near Lake Quinault challenged the QIN's ownership of Lake Quinault by filing a federal complaint against QIN and the State of Washington claiming the Lake is outside of the boundaries of the Quinault Reservation and therefore, QIN has no jurisdiction over it. Western District Court Judge Leighton dismissed the case based on the QIN's sovereign immunity. See Order, Case No. 3:14-cv-06025-RBL attached at Exhibit 1.

The same property owners group filed essentially the same lawsuit in state court in 2016 but only named the State of Washington as a plaintiff. They clothed their challenge in a request for a Declaratory Judgment and through a Public Trust Doctrine claim. The QIN appeared as an *amicus* (friend of the court) party and argued: 1) the United States holds the bed of Lake Quinault in trust for the QIN, and 2) both the United States and QIN are necessary parties and cannot be joined because of their sovereign immunity. The State Court of Appeals agreed and affirmed the Superior Court dismissal. See Order, No. 76017-3-1, attached at Exhibit 2. The Court noted the weakness of the landowners' claim, calling the landowners' claim that title to Lake Quinault was transferred from the federal government to the State upon statehood "untenable" and "doubtful," but concluded that "we need not decide this question and do not do so." *Id.* at 5. The property owners have requested review by the Washington State Supreme Court, which has not yet responded. However, we believe it is unlikely it will accept review given the strength of the Opinion by the Court of Appeals.

The language of the Executive Order establishing the Quinault Indian Reservation is unambiguous that Lake Quinault is included within the boundaries: "thence in a direct line to the most southerly end of Quinault Lake; thence northerly around the east shore of said lake to the northwest point thereof;" (1873). 1 Kapp. 923-24. Accordingly, the Ownership by QIN of the lakebed to the ordinary high water mark of Lake Quinault was confirmed by Solicitor Opinion dated July 12, 1961, a Solicitor Memo dated August 19, 2009, and by a partial survey by the Bureau of Land Management in 2012. All are attached at Exhibit 3.

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORTH QUINAULT PROPERTIES, LLC, a
Washington limited liability company;
THOMAS LANDRETH, an individual, and
BEATRICE LANDRETH,

Plaintiffs,

v.

QUINAULT INDIAN NATION, a federally
recognized Indian tribe, in its own capacity, as
a class representative, and as parens patriae;
STATE OF WASHINGTON DEPARTMENT
OF NATURAL RESOURCES; ALL OTHER
PERSONS OR PARTIES UNKNOWN
CLAIMING ANY RIGHT, TITLE, ESTATE,
LIEN, OR INTEREST IN THE LAKE AND
LAKEBED KNOWN AS LAKE QUINAULT,

Defendants.

Case No.: 3:14-cv-06025-RBL

**ORDER GRANTING QUINAULT
INDIAN NATION'S MOTION TO
DISMISS**

THIS MATTER came before the Court for hearing on the motion by Defendant Quinault Indian Nation to dismiss Plaintiffs' complaint pursuant to Rule 12(b)(1) and 12(b)(7) of the Federal Rules of Civil Procedure. The Court has considered the parties' arguments and being

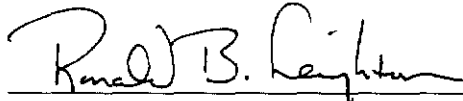
ORDER GRANTING QUINAULT INDIAN
NATION'S MOTION TO DISMISS – Page 1

1 fully advised finds that Plaintiff's Complaint against the Quinault Indian Nation is barred by the
2 doctrine of Tribal sovereign immunity.

3 Accordingly, it is ORDERED as follows:

- 4 1. Defendant Quinault Indian Nation's Motion to Dismiss is GRANTED.
- 5 2. Plaintiffs' Complaint is dismissed without prejudice with leave to amend
6 within thirty (30) days.

7 DATED this 4th day of May, 2015.

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10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE

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ATTACHMENT 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

NORTH QUINAULT PROPERTIES,
LLC, a Washington limited liability
company; THOMAS LANDRETH, an
individual; and BEATRICE LANDRETH,

Appellants,

v.

STATE OF WASHINGTON; and PETER
GOLDMARK, in his official capacity as
Commissioner of Public Lands,

Respondents.

No. 76017-3-1

DIVISION ONE

UNPUBLISHED

FILED: January 30, 2017

2017 JAN 30 AM 10:56

COURT OF APPEALS
CLERK OF COURT

Cox, J. — North Quinault Properties LLC, Thomas Landreth, and Beatrice Landreth (collectively, “Properties LLC”), appeal the trial court’s grant of summary judgment to the State and the Commissioner of Public Lands (collectively, “the State”). There are no genuine issues of material fact. Properties LLC is not entitled to relief under the Declaratory Judgment Act (UDJA). Moreover, it is not entitled to either a writ of mandamus or an injunction. The State is entitled to summary dismissal with prejudice of this case. We affirm.

Properties LLC is comprised of persons who claim property interests in the shores of Lake Quinault. The Quinault Indian Nation (the “Nation”) claims an

No. 76017-3-1/2

ownership interest in Lake Quinault. This claim is based on the 1856 Treaty of Olympia and the 1873 Executive Order of President Ulysses S. Grant. These both predate Washington statehood in 1889.

In recent years, the Nation wrote to some of the owners of property on the shores of the lake, requiring that they apply for permit approval of a pipe extruding below the ordinary high water mark on their property. The Nation may have also prevented some of these owners from fishing and repairing a private dock.

Some of these owners brought an action in federal court against the Nation, the State, and the Department of Natural Resources (DNR). They sought declaratory and injunctive relief, arguing that the State owned the bed of Lake Quinault and had failed to protect the public's access to it.

The Nation and the State moved for dismissal based on their respective sovereign immunities to suit without their consent. The federal court granted their motions.

Thereafter, Properties LLC commenced this action against the State. It did not join either the Nation or the United States of America, as trustee for the Nation. In its complaint, it seeks a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake." It also seeks a determination of "the public's right [of] access [to] the Lake, its shore and lakebed."¹

¹ Clerk's Papers at 6.

The trial court granted the Nation leave to appear as an amicus curiae. Thereafter, the State moved for summary judgment and dismissal with prejudice. The trial court granted the motion.

Properties LLC appeals.

DECLARATORY JUDGMENT ACT

Properties LLC argues the trial court incorrectly determined that this case cannot proceed under the UDJA. We disagree.

A threshold issue is whether RCW 7.24.110 bars this action requesting declaratory relief. We hold that it does.

In its summary judgment order, the trial court ruled that both the Nation and the United States are parties that cannot be joined in this action because of sovereign immunity. The court further ruled that this action could not proceed under RCW 7.24.110 of the UDJA.

We review de novo the grant of summary judgment.² We also review de novo the provisions of a statute to determine the legislature's intent.³

This statute provides in relevant part as follows: "When declaratory relief is sought, all persons *shall* be made parties who have or claim any interest which would be affected by the declaration, and *no declaration shall prejudice* the rights of persons not parties to the proceeding"⁴

² Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

³ Guest v. Lange, 195 Wn. App. 330, 335, 381 P.3d 130 (2016).

⁴ RCW 7.24.110 (emphasis added).

It is beyond legitimate dispute that the word “shall” is mandatory, not permissive.⁵ Given this, there is only one reasonable reading of this statute. The legislature intends that all persons who claim any interest that would be affected by the case “**shall** be made parties.”⁶ Correspondingly, the legislature also intends that “**no** declaration shall prejudice the rights of persons not parties.”⁷

It is uncontested that the Nation **claims** an interest in the subject of this action: Lake Quinault. The treaty and executive order, both of which predate Washington statehood, evidence this claim. We presume similar analysis applies to the United States, which appears to act as trustee for the Nation with respect to Lake Quinault.⁸ Nothing in this record shows that Properties LLC contests either of these basic points.

It is also uncontested that neither the Nation nor the United States can be made subject to suit absent its consent.⁹ There is no showing of consent by either sovereign entity in this record. Accordingly, they may not be joined to this action.

⁵ State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

⁶ RCW 7.24.110 (emphasis added).

⁷ Id. (emphasis added).

⁸ See Minnesota v. United States, 305 U.S. 382, 386, 59 S. Ct. 292, 83 L. Ed. 235 (1939); Carlson v. Tulalip Tribes of Wash., 510 F.2d 1337, 1339 (9th Cir. 1975).

⁹ Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2030, 188 L. Ed. 2d 1071 (2014); United States v. Mitchell, 445 U.S. 535, 538, 100 S. Ct. 1349, 63 L. Ed. 2d 607 (1980).

A remaining threshold issue under the plain language of this statute is whether any declaration in this action would prejudice the rights of either the Nation or the United States. Plainly, it would.

There is nothing speculative about what is at the heart of this case. The Nation and the United States claim an interest in Lake Quinault. The complaint challenges these claims. As we previously stated in this opinion, Properties LLC frames its request for relief as a “court determination as to the ***status of Lake Quinault*** and the property rights of non-tribal property owners abutting the Lake.”¹⁰ It also seeks a determination of “the public’s right [of] access [to] ***the Lake, its shore and lakebed***.”¹¹

While Properties LLC clothes its request under the public trust doctrine, it does not satisfactorily explain why it should be allowed to seek adjudication of the above emphasized interests in the absence of the Nation and the United States. Instead, it implausibly states: “This Court does not have to decide the extent of the Nation’s interest in the Lake to grant relief to Plaintiffs.”¹² And in doing so, it relies on the equally untenable presumption that title to Lake Quinault was transferred from the federal government to the State upon statehood.¹³ On this record, that appears doubtful. But we need not decide this question and do not do so.

¹⁰ Clerk’s Papers at 6 (emphasis added).

¹¹ Id. (emphasis added).

¹² Appellants’ Brief at 4.

¹³ Id. at 3-4.

Only if the Nation and the United States were parties could there be a proper resolution of ownership issues that are at the heart of this case. In the absence of both, there cannot be a proper resolution of these issues.

Accordingly, RCW 7.24.110 is not satisfied in either respect.

The plain words of this statute that we have just discussed are sufficient to resolve this question. But the Division Two case of Bainbridge Citizens United v. Department of Natural Resources¹⁴ also addressed this statute and reached the same result.

There, Bainbridge Citizens United brought an action against the DNR to require it to enforce its own regulations against alleged trespassing on state-owned aquatic lands.¹⁵ But it failed to join the alleged trespassers as parties. The DNR moved for summary judgment, arguing that the court could not proceed as Bainbridge Citizens United had failed to join the alleged trespassers as parties.¹⁶ The trial court granted that motion.¹⁷

Division Two of this court affirmed that order, holding that the trial court could not completely determine the controversy if the alleged trespassers were not present.¹⁸ Specifically, those absent could neither rebut the trespassing

¹⁴ 147 Wn. App. 365, 198 P.3d 1033 (2008).

¹⁵ Id. at 369.

¹⁶ Id. at 370.

¹⁷ Id.

¹⁸ Id. at 373.

No. 76017-3-1/7

claims nor otherwise protect their interests from a judgment that would necessarily affect them.¹⁹ It would “necessarily affect[] the [alleged trespassers’] interest in property ownership and use.”²⁰ Accordingly, the court held that the alleged trespassers were required to be joined and, absent their joinder, the UDJA required dismissal.²¹

Here, for the same reasons we already discussed in this opinion, the absence of the Nation and the United States would prejudice their rights to claim ownership in Lake Quinault. This case also supports the ruling of the trial court.

Neither the opening brief nor the reply of Properties LLC deals directly with the effect of RCW 7.24.110 that bars proceeding with this action. Its argument focuses on other provisions of the UDJA which we now consider.

Skirting the issue of RCW 7.24.110, Properties LLC argues that RCW 7.24.020 on which the State relies, in part, is not an additional limitation to the request for declaratory relief. Not so.

That provision renders declaratory relief unavailable to challenge the State’s application or enforcement of State law. Under RCW 7.24.020, a person with proper standing “may have determined any question of construction or validity arising under” an instrument or statute affecting their rights. Bainbridge Citizens United clarified that this statute provides for review only “to determine the facial validity of an enactment, as distinguished from its application or

¹⁹ Id.

²⁰ Id.

²¹ Id. at 373-74.

No. 76017-3-I/8

administration.”²² The party seeking such relief must raise a “question of construction or validity.”²³ Thus, in that case, the court denied review because Bainbridge Citizens United merely asked the court to declare that the DNR had to enforce its own regulations.²⁴ Such relief did not go to the construction or validity of the regulations.²⁵

Similarly here, Properties LLC raises no question about the construction or validity of any statute. Rather, it seeks a declaration on how the State must uphold its public trust duty. The UDJA does not provide for review of such a claim.

Accordingly, the trial court properly concluded that it could not issue a declaratory judgment.

Properties LLC argues we should overlook these restrictions because of language in RCW 7.24.010 and 7.24.050. RCW 7.24.010 reads:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

RCW 7.24.050 reads: “The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW

²² Id. at 374.

²³ RCW 7.24.020.

²⁴ Bainbridge Citizens United, 147 Wn. App. at 375.

²⁵ Id.

7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.”

Division Two of this court considered the effect of these provisions in Bainbridge Citizens United. There, the court concluded that a request for the State to enforce certain laws against alleged trespassers did not touch upon “rights, status [or] other legal relations” as RCW 7.24.010 required.²⁶ Neither would a declaration that the State must enforce such laws terminate the controversy, as RCW 7.24.050 required, but it would rather “reopen the controversy of whether the individuals did trespass.”²⁷ Accordingly, the court concluded that the trial court in that matter lacked authority to issue a declaratory judgment under these provisions as well.²⁸

Here, Properties LLC’s argument fails whether or not its request touches upon rights, status, or other legal relations in Lake Quinault. If it does, it would prejudice the Nation’s and the United States’ claims and require their joinder. But if it does not, then declaratory relief would be improper under RCW 7.24.010. Similarly, this litigation has demonstrated that a declaration would not terminate the controversy, as required under RCW 7.24.050. The Nation and the United States would have the right to continue to press their claims, and further controversies over access and ownership to Lake Quinault would ensue.

²⁶ Id.

²⁷ Id.

²⁸ Id.

We conclude that the trial court correctly determined that this case cannot proceed because it is barred by RCW 7.24.110. Likewise, it also correctly concluded that RCW 7.24.020 bars declaratory relief. These bases are dispositive, and we need not also address whether this action is, alternatively, also barred by CR 19.

The additional requests for relief considered below depend upon a declaration as to the status of Lake Quinault. Because the trial court rightly declined to proceed on this declaratory request, the following requests for relief are unavailable.

WRIT OF MANDAMUS

Properties LLC next argues that the trial court abused its discretion in declining to issue a writ of mandamus. We hold that the trial court did not abuse its discretion in doing so.

A writ of mandamus is an extraordinary remedy that requires a state official "to comply with law when the claim is clear and there is a duty to act."²⁹ Thus, such relief will not lie to compel a discretionary or "general course of official conduct."³⁰ Instead, the writ is only appropriate "[w]here there is a specific, existing duty which a state officer has violated and continues to violate."³¹

²⁹ Ahmad v. Town of Springdale, 178 Wn. App. 333, 341, 314 P.3d 729 (2013).

³⁰ Walker v. Munro, 124 Wn.2d 402, 408, 879 P.2d 920 (1994); see Ahmad, 178 Wn. App. at 341; County of Spokane v. Local No. 1553, American Fed'n of State, County, & Mun. Emps., AFL-CIO, 76 Wn. App. 765, 769, 888 P.2d 735 (1995).

³¹ Walker, 124 Wn.2d at 408.

We review for abuse of discretion a trial court's decision on the issuance of a writ of mandamus.³²

Here, Properties LLC claims that such a specific, existing duty exists, namely the State's duty under the public trust doctrine to "maintain public access to navigable waterways."

The trial court ruled that a writ of mandamus would not issue on two bases. First, state action under the asserted doctrine is discretionary. Second, such a writ is not available to direct general compliance with law. These conclusions correctly applied the relevant law.

Regarding the first basis, any duty under the public trust doctrine is discretionary. State law "determines the public trust doctrine's limitations within the boundaries of the state."³³ In doing so, the legislature has recognized the complicated roles the State undertakes in managing its aquatic lands to promote the public interest. It has found that Washington's "aquatic lands are faced with conflicting use demands."³⁴ It has thus tasked the DNR with "provid[ing] a balance of public benefits for all citizens of the state."³⁵ The DNR must necessarily exercise great discretion in balancing these competing needs.

³² Ahmad, 178 Wn. App. at 342.

³³ Wash. State Geoduck Harvest Ass'n v. Dep't of Nat. Res., 124 Wn. App. 441, 451, 101 P.3d 891 (2004).

³⁴ RCW 79.105.010.

³⁵ RCW 79.105.030.

Here, the trial court could not issue a writ of mandamus to compel the State to enforce the public trust doctrine, as that doctrine entails substantial discretion. Action within such discretion is not amenable to relief by mandamus.

Regarding the second basis, Properties LLC fails to indicate with requisite specificity the duty it requests the State perform. They ask only that the State protect their access to Lake Quinault. What form this would take is left to speculation. Such a request asks the State do nothing more specific than enforce the public trust doctrine and, as such, is insufficient to justify a writ of mandamus.

Thus, the trial court properly concluded that a writ of mandamus was improper because it would compel the State to take discretionary and general action.

INJUNCTIVE RELIEF

Properties LLC lastly argues that the trial court abused its discretion in denying their request for injunctive relief. We disagree.

To obtain injunctive relief, a party must show “(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.”³⁶

³⁶ Tyler Pipe Indus., Inc. v. Dep’t of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting Port of Seattle v. Int’l Longshoremen’s & Warehousemen’s Union, 52 Wn.2d 317, 324 P.2d 1099 (1958)); RCW 7.40.020.

The party seeking the injunction bears the burden to show all three elements.³⁷ The trial court will not issue an injunction in a “doubtful” case.³⁸ This court reviews for abuse of discretion a trial court’s grant or denial of an injunction.³⁹

Here, regarding the first element, Properties LLC argues that it has a clear legal or equitable right at stake. But to conclude that right is clearly established, the trial court would have to determine whether the State or the Nation owns the Lake. We have already discussed why the trial court could not reach this determination absent the Nation and the United States. Thus, Properties LLC fails to establish this first element. Accordingly, we need not address the other two elements.

The trial court did not abuse its discretion in denying an injunction.

We affirm the summary judgment order dismissing this action with prejudice.

Cox, J.

WE CONCUR:

Trickey, ACJ

Appelwhite, J.

³⁷ San Juan County v. No New Gas Tax, 160 Wn.2d 141, 153, 157 P.3d 831 (2007).

³⁸ Tyler Pipe Indus., Inc., 96 Wn.2d at 793 (quoting Isthmian S.S. Co. v. National Marine Eng'rs' Beneficial Ass'n, 41 Wn.2d 106, 117, 247 P.2d 549 (1952)).

³⁹ San Juan County, 160 Wn.2d at 153.

ATTACHMENT 3

Bureau of Indian Affairs (Realty)

July 17, 1961

Office of the Regional Solicitor, Portland

cc: BIA Files

Whether Quinault Lake is within the boundary of the Quinault Reservation and what rights the Tribe has insofar as the lake is concerned

Reference is made to your memorandum of June 15 enclosing a copy of the June 14 letter from the Superintendent of Western Washington Agency, asking our opinion concerning the above subject.

The entire Quinault Lake is within the boundary of the Quinault Reservation. The Executive Order of November 4, 1873, establishing the Reservation describes the boundary thereof as follows:

"Commencing on the Pacific coast at the Northwest corner of the present Reservation, as established by Mr. Smith in his Survey under Contract with Superintendent Miller, dated September 16, 1861, thence due west, and with the line of said survey, 5 miles to the southeast corner of said reserve thus established; thence in a direct line to the most southerly end of Quinault Lake; thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Quist-shes River and 3 miles above its mouth; thence with the course of said river to a point on the Pacific Coast, at low-water mark, a half mile above the mouth of said river; thence southerly, at low water mark, along the Pacific to the place of beginning.

The above description begins at the southerly end of the lake and then proceeds "northerly around the east shore of said lake to the northwest point thereof". "Around the shore" includes the strip between high and low water mark, since the word "shore" means the land washed by any movement of the waters between high and low water mark. (Osaka v. Delaney, 24 U.S. 531, 540 (1808)). It is synonymous with the word "beach". (Elliott v. Stewart, 15 Ore. 259, 14 Pac. 416). The entire lake bed, including the land between high and low water mark, is therefore within the boundary of the reservation.

ATTACHMENT - D (P 1 of 3)

The Quinault Reservation was established pursuant to treaty with the Quinault and Quillehute Indians, concluded July 1, 1855 and January 25, 1856 (12 Stat. 971). Executive Order reservations stand on the same basis as treaty reservations. (Gibson v. Anderson, 131 Fed. 39 at 42). In Montana Power Co. v. Rochester, (9th Cir., 1942), 127 F.2d 189, it was held that the southerly half of Flathead Lake was within the boundaries of the Flathead Reservation, and therefore the United States held title to the southerly half of the lake bed in trust for the tribe. So in the instant case, where the boundaries of the reservation include the entire lake, the United States holds title to the bed of the entire lake in trust for the Indians of the Quinault Reservation.

The letter from the Superintendent indicates that abutting upland owners (nontrust land) have constructed numerous boat ramps, floats, docks, bulkheads, and small buildings on piling along the shore. Obviously, inasmuch as the entire bed of the lake below the high water mark is tribal property, held in trust by the United States for the Indians of the Quinault Reservation, the upland owners have no right, title or interest in or to the bed of the lake which will permit said upland owners to construct any ramps, floats, docks, bulkheads or buildings resting upon, in whole or in part, any portion of the lake bed, unless constructed by permission of the tribe and the United States. No such right in the upland owners can be acquired as a result of adverse possession, laches, or the statute of limitations. They are not applicable to establish title adverse to the United States and its Indian wards. (See United States v. 7,405.3 Acres of Land, 97 F.2d 417 and cases therein cited; Stanley v. Schmalz, 174 U.S. 508, 376 L. Ed. 259; Board of County Commissioners of Jackson County v. United States, 308 U.S. 343, 84 L. Ed. 313). Nor do the allotments within the Quinault Reservation carry title to the low water mark of Quinault Lake. The allotments are "to the shore" of the lake. In Montana Power Company v. Rochester, supra, the court held that allotments within the Flathead Reservation extended to Flathead Lake within the reservation but did not grant any title to the bed of the lake below high water mark. The court pointed out that the United States rule is that patents to lands bordering waters grant to the allottee title only to the high water mark in order to reserve for the common use of the tribe the land between the low and high water marks.

The entire bed of Quinault Lake is therefore within the reservation and the title thereto is in the United States in trust for the Quinault Tribe and other Indians of the reservation entitled to the use thereof. Neither the allottees nor the upland owners have any right, title or interest in or to the bed of the lake below the line of high water, and the Quinault Tribe has the right, with the consent

of the United States, to lease all or any part of the lake bed.

For the Regional Solicitor

Johnston Wilson
Attorney

cc: John Wilson

ATTACHMENT - D (P. 3 of 3)

Bureau of Indian Affairs (Realty)

July 17, 1961

Office of the Regional Solicitor, Portland

cc: BIA Files

Whether Quinalt Lake is within the boundary of the Quinalt Reservation and what rights the Tribe has insofar as the lake is concerned.

Reference is made to your memorandum of June 15 enclosing a copy of the June 16 letter from the Superintendent of Western Washington Agency, asking our opinion concerning the above subject.

The entire Quinalt Lake is within the boundary of the Quinalt Reservation. The Executive Order of November 4, 1873, establishing the Reservation describes the boundary thereof as follows:

"Commencing on the Pacific coast at the Northwest corner of the present reservation, as established by Mr. Smith in his survey under contract with Superintendent Miller, dated September 16, 1861; thence due east, and with the line of said survey, 5 miles to the southeast corner of said reserve thus established; thence in a direct line to the most southerly end of Quinalt Lake; thence northerly around the east shore of said lake to the Northwest point thereof; thence in a direct line to a point a half mile north of the Quast-shoe River and 3 miles above its mouth; thence with the course of said river to a point on the Pacific Coast, at low water mark, a half mile above the mouth of said river; thence southerly, at low water mark, along the Pacific to the place of beginning."

The above description begins at the southerly end of the lake and then proceeds "northerly around the east shore of said lake to the northwest point thereof". "Around the shore" includes the strip between high and low water mark, since the word "shore" means the land washed by any movement of the waters between high and low water mark. (*Quaker v. Delaney*, 24 N.Y.S. 339, 340 (1893)). It is synonymous with the word "beach". (*Killitt v. Stewart*, 15 Oreg. 259, 14 Pac. 416). The entire lake bed, including the land between high and low water mark, is therefore within the boundary of the reservation.

ATTACHMENT - D (P 1 of 3)

The Quinsult Reservation was established pursuant to treaty with the Quinault and Quillehute Indians, concluded July 1, 1855 and January 25, 1856 (12 Stat. 971). Executive Order reservations stand on the same basis as treaty reservations. (Gibson v. Anderson, 131 Fed. 39 at 42). In Montana Power Co. v. Rochester, (9th Cir., 1942), 127 F.2d 189, it was held that the southerly half of Flathead Lake was within the boundaries of the Flathead Reservation, and therefore the United States held title to the southerly half of the lake bed in trust for the tribe. So in the instant case, where the boundaries of the reservation include the entire lake, the United States holds title to the bed of the entire lake in trust for the Indians of the Quinsult Reservation.

The letter from the Superintendent indicates that abutting upland owners (nontrust land) have constructed numerous boat ramps, floats, docks, bulkheads, and small buildings on piling along the shore. Obviously, inasmuch as the entire bed of the lake below the high water mark is tribal property, held in trust by the United States for the Indians of the Quinsult Reservation, the upland owners have no right, title or interest in or to the bed of the lake which will permit said upland owners to construct any ramps, floats, docks, bulkheads or buildings resting upon, in whole or in part, any portion of the lake bed, unless constructed by permission of the tribe and the United States. No such right in the upland owners can be acquired as a result of adverse possession, laches, or the statute of limitations. They are not applicable to establish title adverse to the United States and its Indian wards. (See United States v. 7,405.1 Acres of Land, 97 F.2d 417 and cases therein cited; Stanley v. Schwalby, 174 U.S. 588, 376 L. Ed. 259; Board of County Commissioners of Jackson County v. United States, 308 U.S. 343, 84 L. Ed. 313). Nor do the allotments within the Quinsult Reservation carry title to the low water mark of Quinsult Lake. The allotments are "to the shore" of the lake. In Montana Power Company v. Rochester, *supra*, the court held that allotments within the Flathead Reservation extended to Flathead Lake within the reservation but did not grant any title to the bed of the lake below high water mark. The court pointed out that the United States rule is that patents to lands bordering waters grant to the allottee title only to the high water mark in order to reserve for the common use of the tribe the land between the low and high water marks.

The entire bed of Quinsult Lake is therefore within the reservation and the title thereto is in the United States in trust for the Quinsult Tribe and other Indians of the reservation entitled to the use thereof. Neither the allottees nor the upland owners have any right, title or interest in or to the bed of the lake below the line of high water, and the Quinsult Tribe has the right, with the consent

ATTACHMENT D (P. 2 of 3)

of the United States, to lease all or any part of the lake bed,

For the Regional Solicitor

Johnston Wilson
Attorney

Johnston Wilson

ATTACHMENT - D (P. 3 of 3)

QIN0031



United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION

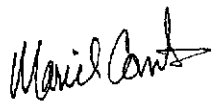
805 SW Broadway, Suite 600
Portland, OR 97205

IN REPLY REFER TO:

MEMORANDUM

AUG 19 2009

To: Superintendent, Taholah Field Office, BIA

From: Mariel Combs, Attorney-Advisor, Office of the Regional Solicitor 

Subject: Lake Quinault—Reservation Boundary

This memorandum is in response to your inquiry regarding whether, under Federal law and pursuant to the general notion of state ownership of the beds of navigable waters, the Quinault Indian Tribe owns the lakebed of Lake Quinault. A review of applicable case law indicates that the Quinault Indian Tribe (Tribe) owns the entire lakebed of Lake Quinault because the entire lake falls within the boundaries of the Reservation, which was established prior to Washington entering into statehood. This created a prior date of acquisition and a vested ownership right with the Tribe. Moreover, Tribal ownership is apparent based on a reasonable interpretation of the intent of the Treaty between the United States and the Tribe and the relationship of the Treaty to the Executive Order.

Background

On July 1, 1855, the United States and the Quinault Tribe entered into the Treaty of Olympia. 12 Stat. 971 (treaty ratified March 8, 1859; proclaimed April 11, 1859). Article 2 of the Treaty states in pertinent part that, “[t]here shall be reserved, for the use and occupation of the tribes, a tract of land *sufficient for their wants* . . . to be selected by the President of the United States . . . and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe.” *Id.* (emphasis added). President Grant later established the territory for the Quinault Reservation by Executive Order, specifically setting aside a tract of land for “fish-eating Indians.” Executive Order, Quinault Reserve (Nov. 4, 1873).

Lake Quinault is located in both Grays Harbor County and Jefferson County, Washington. In your letter, you indicated that both counties have been issuing building permits that conflict with the Quinault Nation’s zoning regulations regarding development on and around the shores of Lake Quinault. Consequently, you asked this office to issue an opinion on the extent of the Tribe’s ownership of the lakebed, as well as the restrictions it may place on development on or around the shores of the lake. Letter from Superintendent, Taholah Agency, Bureau of Indian Affairs (BIA) to William Back, Deputy Regional Solicitor, Pacific Northwest Office of the Regional Solicitor (Sept. 15, 2008).

Discussion

When a court analyzes whether a Presidential reservation complies with the initial treaty provisions for the reservation, the language “sufficient for their wants,” is “to be liberally

construed, doubtful expressions being resolved in favor of the Indians.” Moore v. United States, 157 F.2d 760, 762 (9th Cir. 1946) cert. denied 330 U.S. 827(1947); citing Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918). In Moore, the Ninth Circuit emphasized that the means by which an Indian tribe earns its living determines the government’s intent in establishing the boundaries of the particular reservation. Id. at 763. There, the court was deciphering the boundaries of the Quileute Tribe’s reservation. The court held that the intention of the Executive Order establishing the reservation was to reserve to the tribe the bed and waters of the Quileute River. Id. at 763-64. Without these essential fishing grounds, the tribe would not have been able to sustain itself. Id. at 763.

Like the Quileute, the Quinault, at the time the reservation was established, depended on fish for their livelihood. President Grant acknowledged this dependence when he set apart reservation land for “fish-eating Indians.” See Executive Order. The Executive Order states that one boundary line of the Reservation extends from the Pacific Ocean up to “the most southerly end of Quinailelt Lake; thence northerly around the east shore of said lake to the Northwest point thereof.” Id.; see also Lake Quinault Map (attached for visual reference only). Based on the reasoning in Moore, a court likely would construe the language of the 1855 Treaty in conjunction with the Presidential intent of the 1873 Executive Order to reserve the bed and waters of Lake Quinault to the Tribe because the lake comprised an essential fishing ground. The Quinault Tribe’s “wants” would have been satisfied only through the acquisition of a tract of land that provided it the means to fish for sustenance.

Generally, title to land under navigable waters passes from the United States to a newly admitted state. Shively v. Bowlby, 152 U.S. 1, 48-50 (1894). Washington became a state on November 11, 1889 and on that date, title to the beds of all navigable waters, except all tide and shore lands patented by the United States prior to that date, passed to the newly formed state. Subsequent to the Moore case, discussed above, the Ninth Circuit established a three-part test to determine whether a Tribe owns the bed of navigable waters. Under this test, in order to verify ownership of the lakebed in question, the Quinault must establish that: 1) the reservation grant includes the navigable waters within its borders; 2) the tribe is dependent on the fishery resource in that water for survival; and 3) the government was plainly aware of the vital importance of the water resources to the tribe at the time of the grant. United States v. Aam, 887 F.2d 190, 193-94 (1989), citing Puyallup Indian Tribe v. Port of Tacoma, 717 F.2d 1251, 1258-1259 (9th Cir. 1983); cert denied, 465 U.S. 1049 (1984); Muckleshoot Indian Tribe, v. Trans-Canada Enterprises, Ltd., 713 F.2d 455, 457(9th Cir. 1983) cert denied, 465 U.S. 1049 (1984). The combination of these three factors can establish that the United States implicitly intended to include the bedlands and their overlying waters as a part of the Indian Reservation. Id. at 194. “A tribe’s dependence upon the water’s resources for survival is . . . a key factor in determining whether the United States may have intended to retain beneficial title on behalf of the tribe. Id.

The Quinault Tribe can easily meet these three factors regarding the Tribe’s ownership of the lakebed of Lake Quinault. First, the language of the land reservation to the Quinault Tribe, found in the Executive Order of 1873, expressly includes the navigable waters within its borders. For example, the boundary line of the Reservation is defined in the Executive Order as beginning at the southern end of the Lake and heading north around the east shore of the Lake to the most Northwest point, thus encompassing the whole water body within the reserved lands. It seems clear that the Executive Order intended to reserve the lakebed to the Tribe by establishing the

outer boundary of the Reservation as the respective outer shore of Quinault Lake. Therefore, the first part of the Aam test is met.

Second, historical facts support a finding that the Quinault Tribe was dependent on the fishery resources in Lake Quinault for survival. A characteristic of the pre-treaty Quinault, common in the majority of Washington State tribes, was the universal and “paramount dependence upon the products of an aquatic economy, especially anadromous fish,” to sustain their way of life. United States v. Washington, 384 F. Supp 312, 350 (W.D. Wash. 1974). These fish were vital to the tribal diet, supplying essential proteins, fats, vitamins and minerals. Id. Prior to the formation of reservations, the tribes traveled with the seasons to locate the best runs and fishing practices were largely unrestricted in geographic scope. See id. at 351-53. Each tribe, however, had usual and accustomed fishing places within the territory. Id. at 353. At the time the Quinault Tribe and the United States entered into the Treaty of Olympia, Lake Quinault was one of the Tribe’s usual and accustomed fishing places, thus exemplifying its dependence on the resource for survival. See id. at 374. Thus, the Tribe meets the second part of the Aam test.

Lastly, the government was aware of the Tribe’s dependence on the lake’s fishery resource at the time the Treaty was signed and later when the Executive Order was issued. This federal awareness is apparent in the Executive Order itself, because President Grant expressed the fact that the allotted reserved lands were specifically chosen and set-aside for “fish-eating Indians.” Over the years, the government has reiterated that fishing in the lake is of remarkable importance to the Tribe’s way of life. See Letter from Carl Ullman, Reservation Attorney, to the Office of the Solicitor for Indian Affairs (October 28, 1980) (Attached). Governmental knowledge of the Tribe’s dependence on fishing can also be inferred based simply on the fact that the Executive Order intentionally named the shore of the Lake as the outer boundary of the reserved lands, thus including the lakebed. Also, at treaty time, the government was aware that fishing “constituted the principal economic activity of the Quinault” and that “salmon and steelhead served as the principal food and as an important item of trade.” United States v. Washington, 384 F. Supp. at 375. Based on the above analysis, all three prongs of the Aam test are sufficiently met; the United States conveyed to the Quinault ownership of the bed of Lake Quinault in the Treaty of 1855 and subsequent Executive Order.

Idaho v. United States, 533 U.S. 262 (2001), is the final word from the Supreme Court regarding ownership of land underlying navigable waters. That case however, did not distinguish or even mention the Ninth Circuit’s three-part test from Aam. In Idaho, the Supreme Court looked “to Congress’s declarations and intent . . . to resolve conflicts over submerged lands claimed to have been reserved or conveyed by the United States before statehood.” Id. at 273 and cases cited therein. Similar to Lake Quinault, Idaho involved submerged lands within an Indian Reservation. The Supreme Court’s protocol in this instance was to ask “whether Congress intended to include land under navigable waters within the federal reservation and, if so, whether Congress intended to defeat the future State’s title to the submerged lands.” Id. This two-part test requires a factual inquiry. The resultant finding can be based on Interior reports and the extent of Congressional awareness regarding the importance of the submerged lands and related water rights to the tribe throughout the period prior to both congressional action confirming the reservation and the granting of statehood. Id. at 275. The Court also examined the manner in which Congress dealt with the tribe. Id. at 276. In Idaho, the court held that Congress

recognized and confirmed that the Executive Order intended to bar passage to Idaho of title to the submerged lands at issue, based on congressional negotiations with the tribe, negotiating history, and subsequent events. *Id.* at 280. With respect to Lake Quinault, more records and information would likely be necessary to determine the extent of Congressional awareness and intent to defeat Washington's title to the submerged lands. Based on the existing file, however, there is no indication that the outcome between the Aam and Idaho tests would differ.

You asked what rights the Quinault Nation can exert on the development on or around the shores of Lake Quinault. In this case, on November 4, 1873, through the boundaries designated in his Executive Order, President Grant patented the bed of Lake Quinault to the Tribe. "The legal right to purchase land within an Indian nation gives the purchaser no right of exemption from the laws of such nation, nor does it authorize him to do any act in violation of the treaties with such nation. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 188 n.48 (1982). Consequently, the upland owners have no vested rights in the lakebed and may not build structures that extend into the lake without the Tribe's permission.

A finding that the Tribe owns the bed of Lake Quinault is consistent with decades of advice from this office regarding Tribal ownership of fishable areas within the Quinault Reservation. For example, on August 31, 1961, the Regional Solicitor issued an opinion to the BIA, which stated that the Quinault Tribe, based on the language and intent of the Executive Order, had ownership over the tidelands of the Pacific Ocean, due to its essential character as a tribal fishing location. Memorandum from Office of the Regional Solicitor to Area Director, BIA (Aug. 31, 1961) (Attached).

Moreover, on July 12, 1961 the Office of the Regional Solicitor sent a memorandum to the BIA confirming the fact that the Quinault Tribe owned the entire bed of Lake Quinault. Memorandum from Office of the Regional Solicitor to BIA (July 12, 1961) (Attached). This opinion is in line with previous precedent; in 1945, the Court of Claims held that the northwest boundary point of the Reservation was such as to include the whole Lake. Quinault Tribe of Indians v. United States, 102 Ct. Cl. 822 (1945).¹ The Solicitor's Office issued its opinion in response to tribal concerns, expressed through the Acting Superintendent of the BIA, regarding the construction of boat ramps, floats, docks, bulkheads and the like by the abutting upland owners along the shore of the lake. See Letter from Superintendent, Western Washington Indian Agency, BIA, to Area Director, BIA (June 14, 1961) (Attached). The Solicitor initially noted that the entire lake is within the Reservation due to the description of the Reservation's boundaries in the Executive Order. Letter from Office of the Regional Solicitor to BIA, at 1. As noted, above, the boundary of the Reservation joins the Lake at a southern point and proceeds eastward "around the shore" of the Lake. The shore includes the strip between the high and low water mark, because the word "shore" means the land washed by any movement of the waters between high and low water mark. *Id.*; see also, Oakes v. DeLancey, 30 N.E. 974 (N.Y. 1892).

¹ In a Court of Claims case, 118 Ct. Cl. 220 (1951), the court found that the United States had taken from the Indian reservation the area of land between lines drawn from Milepost 28 ½ along the lake to the coast and Milepost 32 ½ along the lake to the coast. This area of land buttresses the whole northwestern meandering line of the Lake. This area was declared as Olympic National Forest pursuant to the Act of March 3, 1891 (26 Stat. 1095, 1103). The court was not clear regarding whether the government took only the land or part of Lake Quinault as well. There is no indication, however, that the taking extended past the ordinary high water mark into the lake.

The opinion concludes with the pronouncement that “[t]he entire lake bed, including the land between high and low water mark, is therefore within the boundary of the reservation” and “the United States holds title to the bed of the entire lake in trust for the Indians of the Quinault Reservation.” *Id.* at 1-2. Because the entire bed of the lake below the high water mark is tribal property “the upland owners have no right, title or interest in or to the bed of the lake to construct [anything] ... unless constructed by permission of the tribe and the United States.” *Id.* at 2. Additionally, no private right to the lakebed can be acquired against either the Tribe or the United States as a result of adverse possession, laches, or the statute of limitations. See United States v. 7,405.3 Acres of Land, 97 F.2d 417 (4th Cir. 1938). The Regional Solicitor’s Office also noted in the same letter the Ninth Circuit rule that when the United States grants patents to lands bordering waters within a Reservation, the patent grants title to the allottee only to the high water mark “in order to reserve for the common use of the tribe the land between the low and high water marks.” *Id.* at 2, citing Montana Power Company v. Rochester, 127 F.2d 189 (9th Cir. 1942).

A later opinion regarding the Quinault Tribe’s ownership of the tidelands of the Pacific Ocean stressed the fact that the upland owners must abide by the laws of the Indian Nation when on the Reservation. Memorandum from Office of the Regional Solicitor to BIA (Feb. 3, 1970) (Attached). In that instance, because a customary public use right of the coastal beaches had developed within the State of Washington, the Solicitor recommended that the Tribe adopt a comprehensive ordinance regarding tribal ownership of the tidelands and the rights it retained in the beaches. *Id.* at 8. The Tribe developed Conservation Ordinance No. 69-6, establishing types of activities that it determined were now prohibited on the tidelands because “since time immemorial the Quinault Tribe has practiced conservation to protect the invaluable fish, shellfish and game resources of the Reservation from waste and excessive exploitation . . . and exercised sovereignty over its territory.” Quinault Tribe, Conservation Ordinance 69-6, at 1. The Conservation Ordinance established rules to protect the wildlife resources and natural beauty of the Quinault Reservation. If none already exists, a similar ordinance could be promulgated here, so as to allow the Tribe to lay out regulations upland owners must abide by in order to preserve the Lake Quinault fishery.

Conclusion

In sum, interpreting the Executive Order that created the Quinault Reservation, in light of the language of the Treaty and the “sufficient wants” of the Tribe, it is evident that President Grant intended to convey the entire bed of Lake Quinault to the Tribe as an essential fishing ground. Additionally, the rights to this navigable water did not vest with the state upon entry into the nation on an equal footing, because those rights had already been patented to the Tribe. Pursuant to the Tribe’s sovereign power here, it can regulate, permit, and prohibit certain types of activities and construction along the shore and into the lake. Consistent with earlier advice from the Solicitor’s Office, the Quinault Tribe owns the entire bed of Lake Quinault, up to the ordinary high water mark.

Attachments

cc:
Bureau of Land Management, Branch of Geographic Sciences
Attn: Ron Scherler



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

P.O. Box 2965

Portland, Oregon 97208

JUL 17 2012

IN REPLY REFER TO:

9624.1 (OR957)

Gp. 623, WA

Fawn Sharp, President
Quinault Indian Nation
P.O. Box 189
Taholah, Washington 98587-0189


Dear Ms. Sharp:

At the request of the Quinault Indian Nation, we have conducted the dependent resurvey of the adjusted record 1897 meanders of the shore of Quinault Lake through section 18 and a portion of section 8, and surveyed the new meanders through section 18 and a portion of section 8 in Township 23 North, Range 9 West, and surveyed portions of the new meanders of the shore of Quinault Lake in Township 23 North, Range 10 West, Willamette Meridian, Oregon, in support of a resource management and other administrative needs. During the course of this survey we have located areas of unauthorized use along the northern shoreline of Quinault Lake.

This documentation is supplied for your information. The boundaries identified have met our standard of procedure and accurately depict the conditions in the field. Administrative action can now be taken regarding the encroachment.

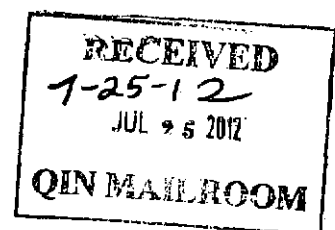
If you have any questions regarding this survey please contact Kyle Hensley, Chief, Cadastral Survey Section 1 at 503-808-6124.

Sincerely,


For Mary J.M. Hartel
Chief, Branch of Geographic Sciences

Enclosure

cc: Gerg Argel, Realty Officer, Northwest Regional Office, BIA
Greg Masten, Superintendent, Taloha Agency





United States Department of the Interior

BUREAU OF LAND MANAGEMENT

OREGON STATE OFFICE

P.O. BOX 2965 (333 SW 1st Avenue)

PORTLAND, OREGON 97208

Memorandum

To: Mary J. M. Hartel, Chief, Branch of Geographic Sciences
From: Richard J. Dieckmann, Cadastral Surveyor
Subject: Unauthorized Use of Federal Interest Lakebed of the Quinault Indian Nation, in Sections 8 and 18, T. 23 N., R. 9 W., and Section 13 in T. 23 N., R. 10 W.

Summary

During the course of the Cadastral Survey of the Ordinary High Water Line of the shore of Lake Quinault, Group 623, Washington, authorized under Special Instructions, dated August 26, 2009, improvements by private landowners were discovered below the ordinary high water line on the Federal Interest lakebed owned by the Quinault Indian Nation. The majority of the improvements encroaching consist of PVC and plastic pipes, extending from the lake onto the shoreline, with some riprap walls and other miscellaneous dock and wave breaker anchors.

Location

The unauthorized use occurred along the northern shoreline of Lake Quinault, on the lakebed of Lake Quinault, owned by the Quinault Indian Nation, in sections 8 and 18, Township 23 North, Range 9 West and in section 13, Township 23 North, Range 10 West.

Date of Discovery

Unauthorized uses were discovered in the following areas during the following time periods:

From the corner of sections 8, 9 and 16, to the meander corner of sections 7 and 8, T. 23 N., R. 9 W.; September 2, 2010 to September 20, 2010.

Continuing in T. 23 N., R. 9 W., From the meander corner of sections 7 and 18, through section 18, to the boundary of townships 9 and 10 west; September 30, 2009 to October 7, 2009.

Continuing from the boundary of Townships 9 and 10 West, through T. 23 N., R. 10 W., to the Auxiliary meander corner of the shore of Lake Quinault, identical with Corner 4 of Parcel A; September 28, 2009 to September 1, 2010.

Continuing in T. 23 N., R. 10 W., from the Auxiliary meander corner of the shore of Lake Quinault T. 23 N., R. 10 W., identical with Corner 5 of Parcel A to the corner of sections 13, 14, 23 and 24; September 22, 2009 to October 8, 2009.

Legal Description and Land Status

The Quinault Indian Reservation originated on July 1, 1855 (12 Stat. 971), when the United States entered into the Treaty of Olympia with the Quinault Tribe. President Ulysses Grant later established the territory for the Quinault Reservation by Executive order on November 4, 1873.

In a letter from the Regional Solicitor's Office to the Bureau of Indian Affairs (Realty), dated July 12, 1961, the boundary of the Quinault Indian Reservation, as defined by the lake, was addressed. The Executive order of November 4, 1873, describes the boundary of the lake surveyed in the following manner, "...to the southerly end of Quinault Lake, thence around the east shore of said lake to the northwesterly point thereof..." in his letter, the Regional Solicitor explained that, "'Around the shore' includes the strip of land between high and low water mark, since the word 'shore' means the land washed by any movement of the waters between high and low water mark. (Oakes v. DeLancey, 24 N.Y.S. 539, 540 (1893). It is synonymous with the word 'beach'. (Elliott v. Stewart, 15 Ore. 259, 14 Pac. 416. The entire lakebed, including the land between high and low water mark, is therefore within the boundary of the reservation."

Unauthorized Use Description

The following unauthorized use of Federal interest land, are located by true mean bearing and distance ties at ground elevation (250 U.S. survey feet above mean sea level) to control monuments, set above the ordinary high water line on National Park Service and Private Fee (by permission) lands. The control monuments are numbered sequentially, starting near the boundary of sections 13 and 14 in Range 10 West and continue clockwise through section 8 in Range 9 West. A full and detailed description of their location can be found in the field notes under Group 623, Washington.

NAD '83 (CORS '96) (EPOCH:2002) Latitudes and longitudes are also reported for all encroachments. All coordinates and ties listed are to or below the OHWL on Tribal land, as specified below. Objects that cross the OHWL are tied where they intersect the OHWL, unless otherwise noted below.

T. 23 N., R. 9 W., Sec. 8

- 1) A stone and gravel jetty, 14 ft. wide, located below the OHWL and extending 14 feet into Lake Quinault. (Diagram 1)

Location:

Latitude 47° 29' 44.696" N., Longitude 123° 51' 15.092" W., located at the center of the jetty. Bearing and distance from Control Point No. 7, N 45° 51' 19" E, 333.64 ft.

- 2) Parallel iron rails flush with the ground, 3 ft. apart, extending 10 ft. past the OHWL. (Diagram 1)

Location:

Latitude 47° 29' 44.798" N., Longitude 123° 51' 15.501" W., located at the intersection with the OHWL. Bearing and distance from Control Point No. 7, N 41° 02' 39" E, 321.84 ft.

T. 23 N., R. 9 W., Sec. 18

- 3) A large concrete block, approximately 30 inches wide, 60 inches long and 30 inches high, located 22.5 ft. below the OHWL. (Diagram 2)

Location:

Latitude 47° 29' 15.734" N., Longitude 123° 52' 08.722" W., located to the center of the block. Bearing and distance from Control Point No. 6, N 51°28'08" E, 244.00 ft.

- 4) A large concrete block, approximately 30 inches wide, 60 inches long and 30 inches high, located 26.4 ft. below the OHWL. (Diagram 2)

Location:

Latitude 47° 29' 15.554" N., Longitude 123° 52' 09.184" W., located to the center of the block. Bearing and distance from Control Point No. 6, N 49°57'40" E, 207.84 ft.

- 5) A large concrete block, approximately 30 inches wide, 60 inches long and 30 inches high, located 24.7 ft. below the OHWL. (Diagram 2)

Location:

Latitude 47° 29' 15.346" N., Longitude 123° 52' 09.661" W., located to the center of the block. Bearing and distance from Control Point No. 6, N 48°16'26" E, 169.33 ft.

- 6) A large concrete block, approximately 30 inches wide, 60 inches long and 30 inches high, located 10 ft. below the OHWL. (Diagram 2)

Location:

Latitude 47° 29' 15.163" N., Longitude 123° 52' 10.061" W., located to the center of the block. Bearing and distance from Control Point No. 6, N 46°25'08" E, 136.54 ft.

- 7) An elevated dock, approximately 4 ft. wide, extending across the OHWL and 3.7 ft. into Lake Quinault. (Diagram 3)

Location:

Latitude 47° 29' 13.814" N., Longitude 123° 52' 12.097" W., located to the center of the end of the dock. Bearing and distance from Control Point No. 6, S 43°55'16" W, 59.04 ft.

- 8) A black plastic pipe, extruding 40 ft. below the OHWL and extending into Lake Quinault. (Diagram 3)

Location:

Latitude 47° 29' 13.966" N., Longitude 123° 52' 13.821" W., located at the water's edge. Bearing and distance from Control Point No. 6, S 80°18'52" W, 161.62 ft.

- 9) A double black plastic pipe, extruding 48 ft. below the OHWL and extending into Lake Quinault. (Diagram 3)

Location:

Latitude 47° 29' 13.970" N., Longitude 123° 52' 16.419" W., located at the water's edge.
Bearing and distance from Control Point No. 6, S 69°14'16" W, 361.19 ft.

- 10) A PVC and iron pipe, extending past the OHWL into Lake Quinault. (Diagram 3)

Location:

Latitude 47° 29' 11.321" N., Longitude 123° 52' 18.251" W., located at the intersection with the OHWL. Bearing and distance from Control Point No. 6, S 57°30'53" W, 549.57 ft.

- 11) A plastic pipe, extruding 28.3 ft. below the OHWL and extending into Lake Quinault. (Diagram 4)

Location:

Latitude 47° 29' 05.650" N., Longitude 123° 52' 24.178" W., located at the edge of the water. Bearing and distance from Control Point No. 5, N 54°07'47" E, 93.19 ft.

- 12) A rip rap wall, projecting 9.7 ft. at its furthest point across the OHWL. (Diagram 4)

Location:

Latitude 47° 29' 05.458" N., Longitude 123° 52' 24.678" W., located at the furthest point below the OHWL. Bearing and distance from Control Point No. 5, N 49°33'20" E, 54.10 ft.

- 13) A corrugated plastic pipe 3 1/2 inches outside diameter, extruding 38.7 ft. below the OHWL and extending into Lake Quinault. (Diagram 5)

Location:

Latitude 47° 29' 00.705" N., Longitude 123° 52' 35.460" W., located at the intersection with the water's edge. Bearing and distance from Control Point No. 5, S 57°26'58" W, 829.80 ft.

- 14) A double plastic pipe, extruding 49.2 ft. below the OHWL and extending into Lake Quinault. (Diagram 5)

Location:

Latitude 47° 28' 59.576" N., Longitude 123° 52' 37.673" W., located at the intersection with the water's edge. Bearing and distance from Control Point No. 5, S 56°37'39" W, 1019.57 ft.

- 15) A double plastic pipe, extruding 56.7 ft. below the OHWL and extending into Lake Quinault. (Diagram 5)

Location:

Latitude 47° 28' 59.104" N., Longitude 123° 52' 39.084" W., located at the intersection with the water's edge. Bearing and distance from Control Point No. 5, S 57°18'10" W, 1126.89 ft.

- 16) A double plastic pipe, extruding 49.2 ft. below the OHWL and extending into Lake Quinault. (Diagram 5)

Location:

Latitude 47° 28' 58.979" N., Longitude 123° 52' 39.943" W., located at the emergence point from the ground. Bearing and distance from Control Point No. 5; S 58°19'51" W, 1183.56 ft.

- 17) A double plastic pipe, extruding 45.9 ft. below the OHWL and extending into Lake Quinault. (Diagram 5)

Location:

Latitude 47° 28' 58.646" N., Longitude 123° 52' 41.496" W., located at the emergence point from the ground. Bearing and distance from Control Point No. 5, S 59°32'28" W, 1292.35 ft.

- 18) The Southeasterly side of a 15 x 15 ft. leanto roof projecting across the OHWL; the Southeast side projects 1.53 ft. across the OHWL at its southeast corner and 0.54 ft. at its southwest corner. (Diagram 6)

Location:

Latitude 47° 28' 57.315" N., Longitude 123° 52' 48.676" W., located at the southeast corner of the roof. Bearing and distance from Control Point No. 4, N 84°27'09" E, 452.93 ft.

- 19) A concrete boat ramp 12 ft. wide, projecting 15 ft. across the OHWL. (Diagram 6)

Location:

Latitude 47° 28' 56.443" N., Longitude 123° 52' 51.717" W., located at the center of the southeasterly end of the ramp. Bearing and distance from Control Point No. 4, S 79°34'27" E, 245.95 ft.

- 20) A plastic pipe extending 24 ft. across the OHWL. (Diagram 6)

Location:

Latitude 47° 28' 56.384" N., Longitude 123° 52' 53.514" W., located at the intersection with the OHWL. Bearing and distance from Control Point No. 4, S 66°55'31" E, 128.80 ft.

T. 23 N., R. 10 W., Sec. 13

- 21) A double plastic pipe extruding 34.4 ft. below the OHWL and extending into Lake Quinault. (Diagram 7)

Location:

Latitude $47^{\circ} 28' 55.730''$ N., Longitude $123^{\circ} 52' 57.042''$ W., located at water's edge.
Bearing and distance from Control Point No. 4, S $46^{\circ} 40' 14''$ W, 170.21 ft.

- 22) A double plastic pipe extruding 12.5 ft. below the OHWL and extending into Lake Quinault. (Diagram 7)

Location:

Latitude $47^{\circ} 28' 55.986''$ N., Longitude $123^{\circ} 53' 01.209''$ W., located at water's edge.
Bearing and distance from Control Point No. 4, S $77^{\circ} 30' 50''$ W, 419.99 ft.

- 23) A metal fencepost 18.3 ft. below the OHWL in Lake Quinault. (Diagram 7)

Location:

Latitude $47^{\circ} 28' 55.922''$ N., Longitude $123^{\circ} 53' 01.290''$ W. Bearing and distance from Control Point No. 4, S $76^{\circ} 49' 48''$ W, 426.89 ft.

- 24) A plastic pipe extruding 18.3 ft. below the OHWL. (Diagram 8)

Location:

Latitude $47^{\circ} 28' 55.402''$ N., Longitude $123^{\circ} 53' 04.659''$ W., located at the exposed end.
Bearing and distance from Control Point No. 4, S $76^{\circ} 56' 52''$ W, 664.23 ft.

- 25) A plastic and metal pipe extruding 16.8 ft. below the OHWL and extending into Lake Quinault. (Diagram 8)

Location:

Latitude $47^{\circ} 28' 54.032''$ N., Longitude $123^{\circ} 53' 07.614''$ W., located at the emergence point from the ground. Bearing and distance from Control Point No. 4, S $71^{\circ} 13' 55''$ W, 897.75 ft.

- 26) A plastic pipe extruding 20.9 ft. below the OHWL and extending into Lake Quinault. (Diagram 8)

Location:

Latitude $47^{\circ} 28' 53.498''$ N., Longitude $123^{\circ} 53' 08.783''$ W., located at the water's edge.
Bearing and distance from Control Point No. 4, S $69^{\circ} 45' 57''$ W, 991.49 ft.

- 27) A plastic pipe extending 20.3 ft. past the OHWL and into Lake Quinault. (Diagram 8)

Location:

Latitude $47^{\circ} 28' 53.140''$ N., Longitude $123^{\circ} 53' 09.858''$ W., located at the intersection with the OHWL. Bearing and distance from Control Point No. 4, S $69^{\circ} 18' 34''$ W, 1073.36 ft.

- 28) A plastic pipe and an iron pipe extruding 16.5 ft. below the OHWL and into Lake Quinault. (Diagram 8)

Location:
Latitude 47° 28' 52.096" N., Longitude 123° 53' 10.887" W., located at the water's edge.
Bearing and distance from Control Point No. 4, S 65°40'56" W, 1179.83 ft.

29) The southeasterly most corner of a riprap wall projecting 7.4 ft. across the OHWL.
(Diagram 9)

Location:
Latitude 47° 28' 48.006" N., Longitude 123° 53' 14.220" W., located at southeastern most corner. Bearing and distance from Control Point No. 4, S 55°24'01" W, 1583.94 ft.

30) The southwesterly most corner of a riprap wall projecting 3 ft. across the OHWL.
(Diagram 9)

Location:
Latitude 47° 28' 48.405" N., Longitude 123° 53' 15.526" W., located at southwestern most corner. Bearing and distance from Control Point No. 4, S 58°21'05" W, 1636.98 ft.

31) The southwesterly most corner of a graveled road projects 3.2 ft. across the OHWL.
(Diagram 10)

Location:
Latitude 47° 28' 48.524" N., Longitude 123° 53' 24.806" W., located at southwestern most corner. Bearing and distance from Control Point No. 3, N 70°14'43" E, 1223.26 ft.

32) A concrete post 12 inches diameter, projecting 3.5 ft. above the ground, 18.3 ft. below the OHWL. (Diagram 11)

Location:
Latitude 47° 28' 49.693" N., Longitude 123° 53' 35.253" W. Bearing and distance from Control Point No. 3, N 39°11'20" E, 686.34 ft.

33) A concrete post 12 inches diameter, projecting 3.2 ft. above the ground, 18.5 ft. below the OHWL. (Diagram 11)

Location:
Latitude 47° 28' 49.668" N., Longitude 123° 53' 35.236" W. Bearing and distance from Control Point No. 3, N 39°24'00" E, 685.05 ft.

34) A concrete post 15 inches diameter, projecting 2.8 ft. above the ground, 17 ft. below the OHWL. (Diagram 11)

Location:
Latitude 47° 28' 49.644" N., Longitude 123° 53' 35.246" W. Bearing and distance from Control Point No. 3, N 39°28'49" E, 682.80 ft.

35) A rip rap wall, projecting 12 ft. across the OHWL. (Diagram 12)

Location:

Latitude 47° 28' 43.246" N., Longitude 123° 53' 44.324" W. located at the midpoint of the southeasterly face of the wall. Bearing and distance from Control Point No. 3, S 57°22'08" W, 224.96 ft.

36) A rip rap wall, projecting 8.9 ft. across the OHWL. (Diagram 12)

Location:

Latitude 47° 28' 43.584" N., Longitude 123° 53' 45.164" W. located at the furthest point across the OHWL on its southwest side. Bearing and distance from Control Point No. 3, S 70°35'55" W, 262.00 ft.

37) A graveled road extending across the OHWL. (Diagram 13).

Location:

Latitude 47° 28' 34.591" N., Longitude 123° 54' 06.734" W. located at the intersection with the OHWL. Bearing and distance from Control Point No. 1, S 58°38'56" W, 478.13 ft.

Conclusion

The cadastral survey of the OHWL for Group 623, Lake Quinault, identifies unauthorized uses of a Federal interest lakebed. It is unclear whether the encroachments were placed on the Federal Interest land because of negligence, or ignorance, but based my conversations with most of the landowners I was able to contact, they are not averse to complying with the Tribe's management and regulation of the area, if given notification.

The methods used to determine the location of the Ordinary High Water Level of Lake Quinault are detailed in the field notes for Group 623, Washington.

Attachments

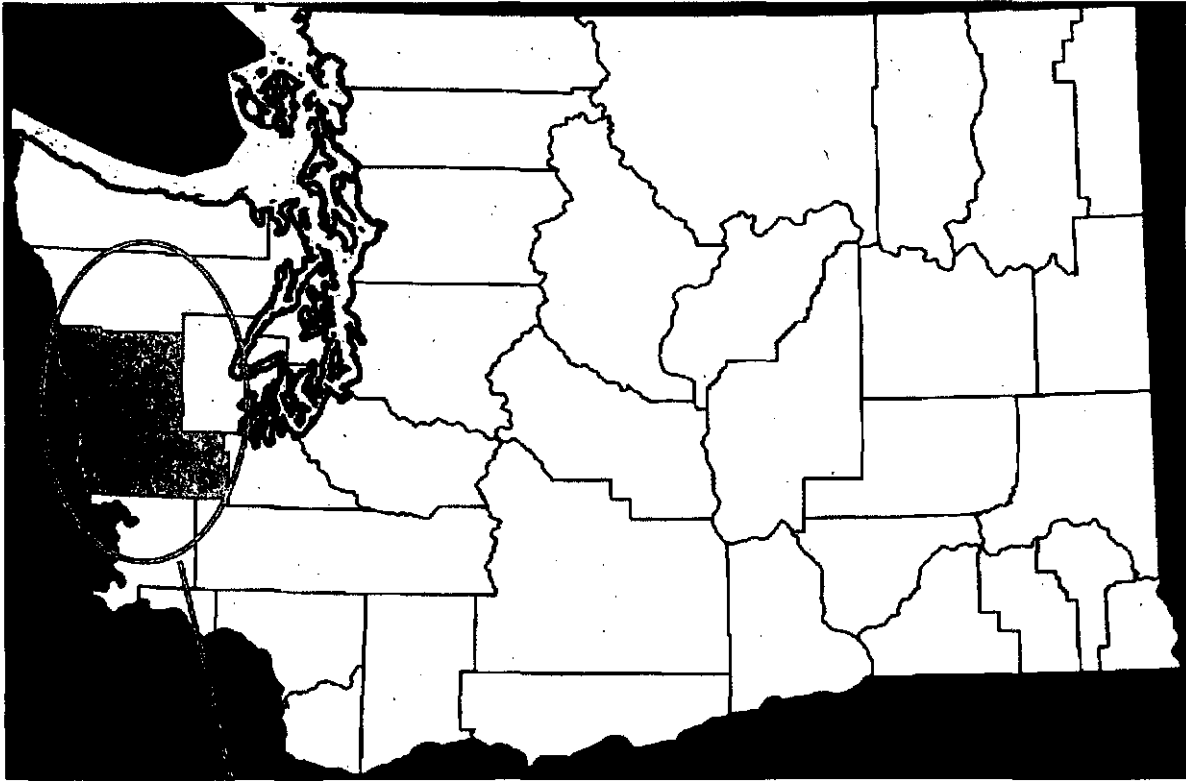
A - Location Diagram

B - Overview Encroachment Diagram

C - Encroachment Diagrams (13 pages)

D - Letter from the Regional Solicitor (3 pages)

LOCATION DIAGRAM



Grays Harbor County

Amanda Park Area

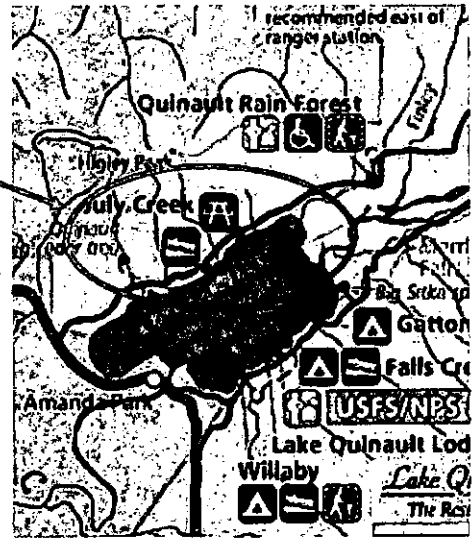
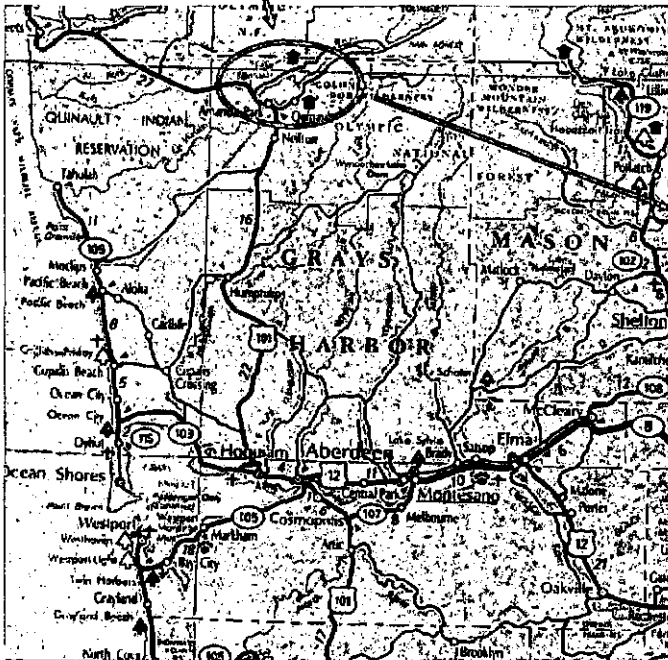




DIAGRAM I

SECTION 8

IRON RAILS

2

STONE AND GRAVEL JETTY

O.H.W.L.

EDGE OF WATER

LAKE QUINAULT

CP-7

SCALE: 1"=60'



ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-7
1	47°29'44.696"	123°51'15.092"	N.45°51'19"E. 333.64'
2	47°29'44.798"	123°51'15.501"	N.41°02'35"E. 321.84'

DIAGRAM 2

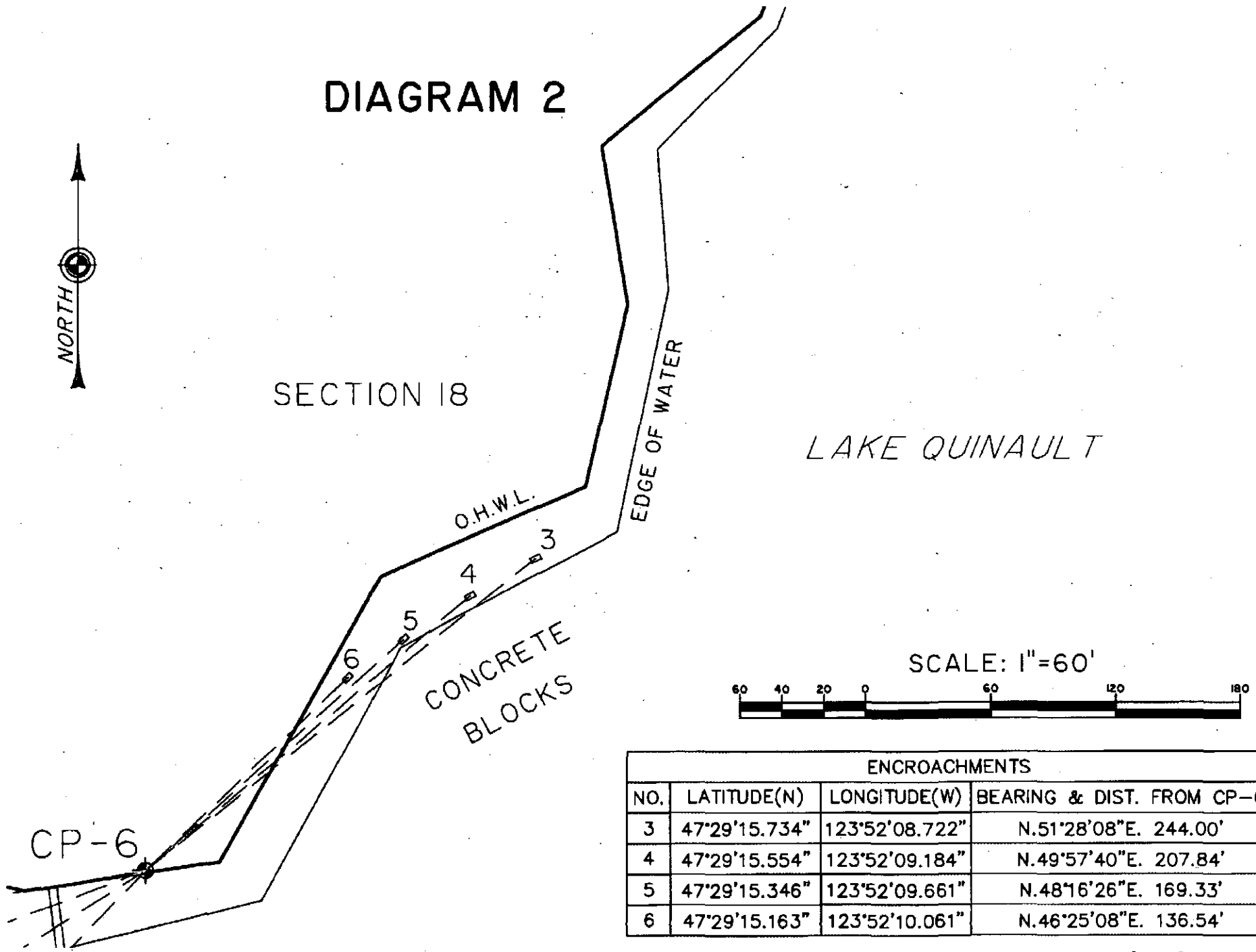


DIAGRAM 3

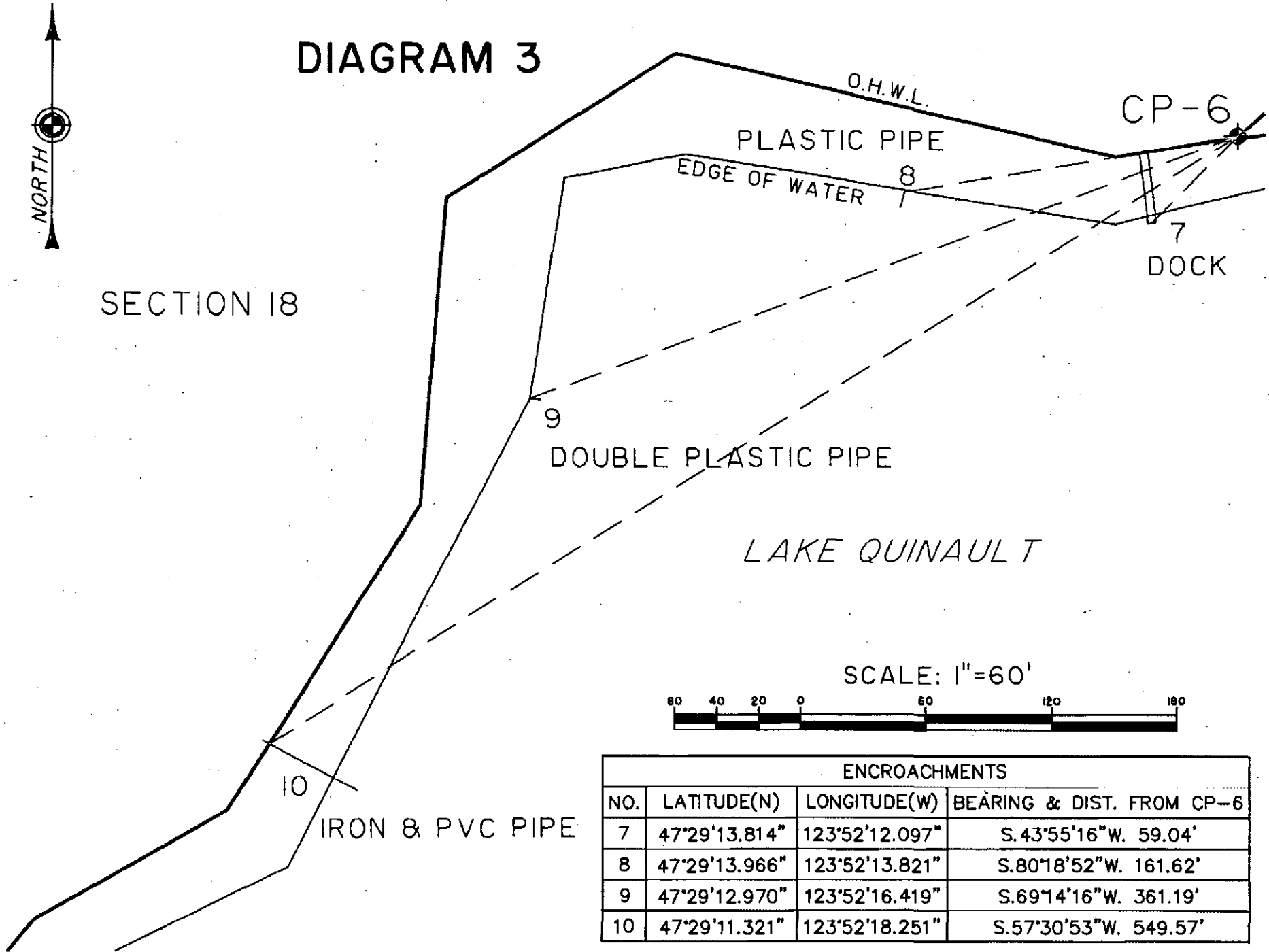
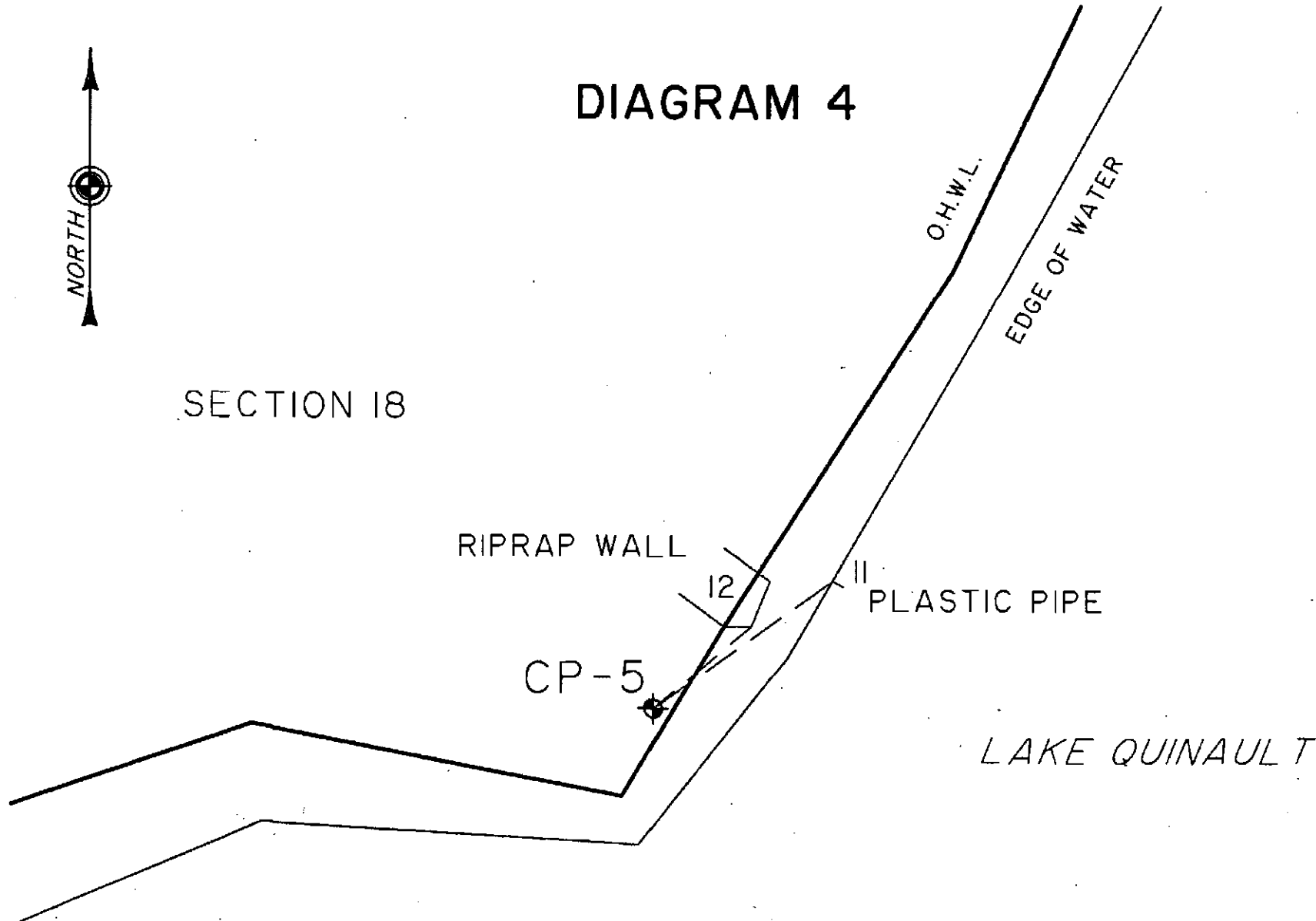




DIAGRAM 4

SECTION 18



LAKE QUINAULT

SCALE: 1"=60'

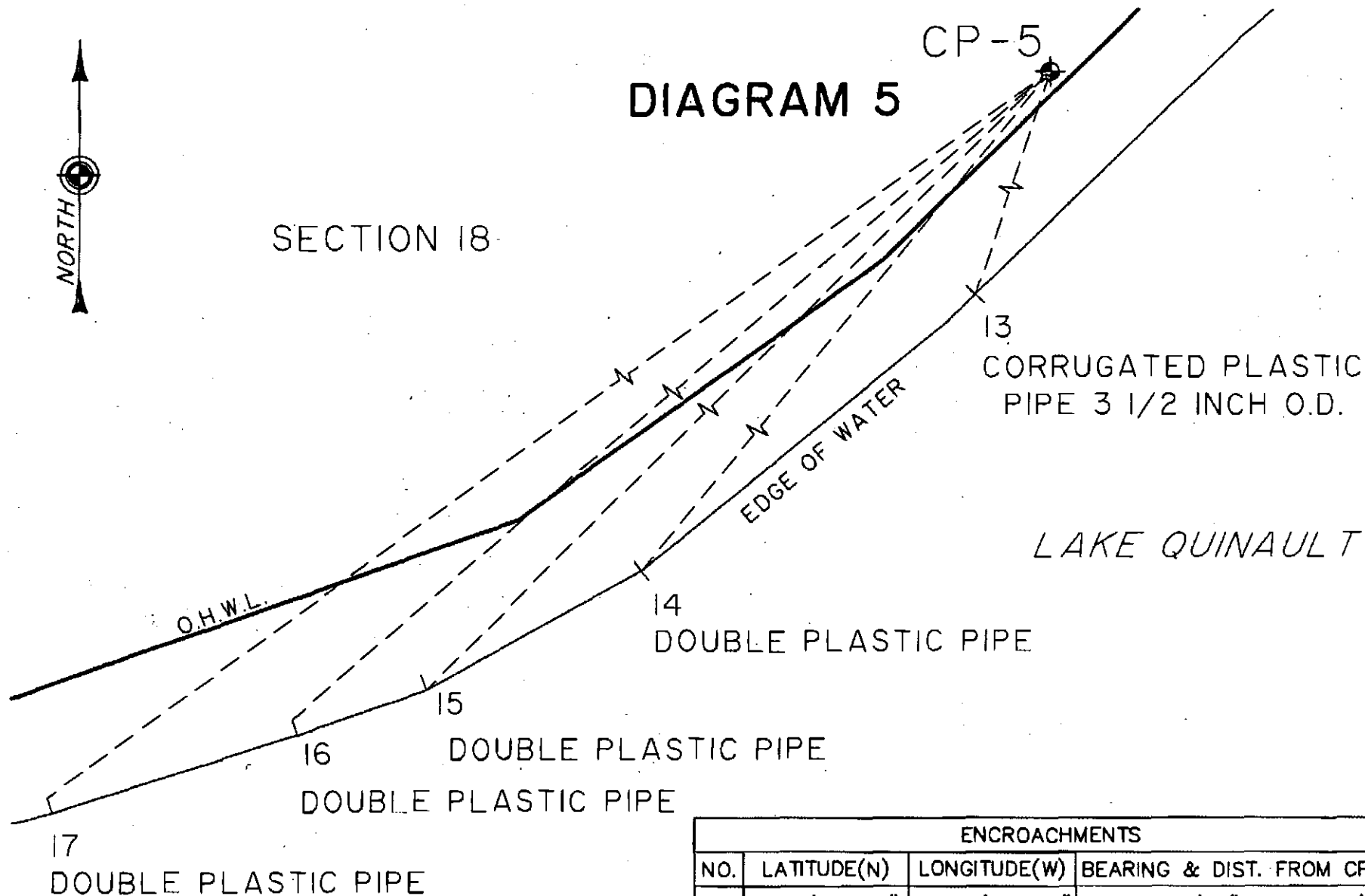


ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-5
11	47°29'05.650"	123°52'24.178"	N.54°07'47"E. 93.19'
12	47°29'05.458"	123°52'24.678"	N.49°33'20"E. 54.10'



DIAGRAM 5

SECTION 18



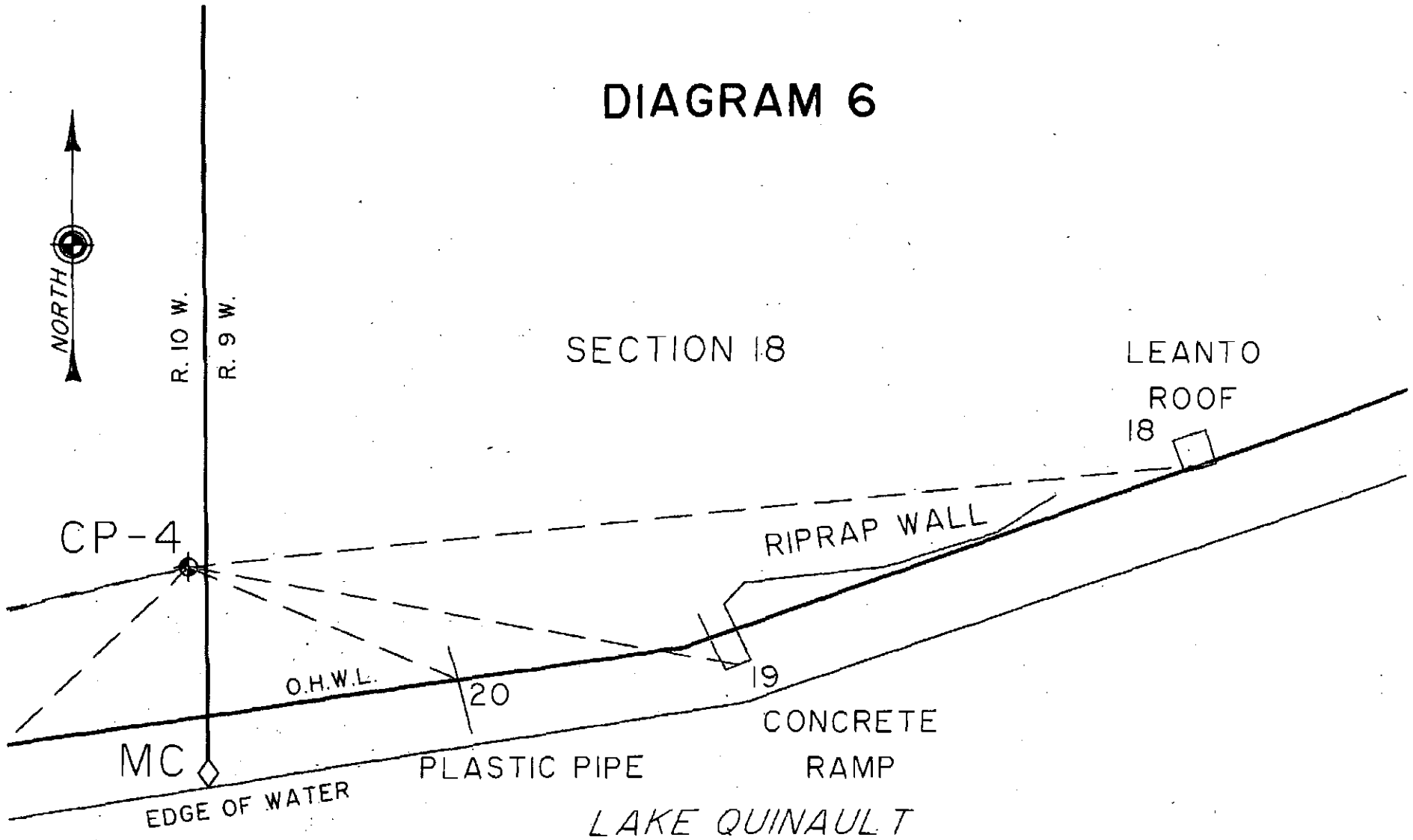
LAKE QUINAULT

ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-5
13	47°29'00.705"	123°52'35.460"	S.57°26'58"W. 829.80'
14	47°28'59.576"	123°52'37.673"	S.56°37'39"W. 1019.57'
15	47°28'59.104"	123°52'39.084"	S.57°18'10"W. 1126.89'
16	47°28'58.979"	123°52'39.943"	S.58°19'51"W. 1183.56'
17	47°28'58.646"	123°52'41.496"	S.59°32'28"W. 1292.35'

SCALE: 1"=60'



DIAGRAM 6

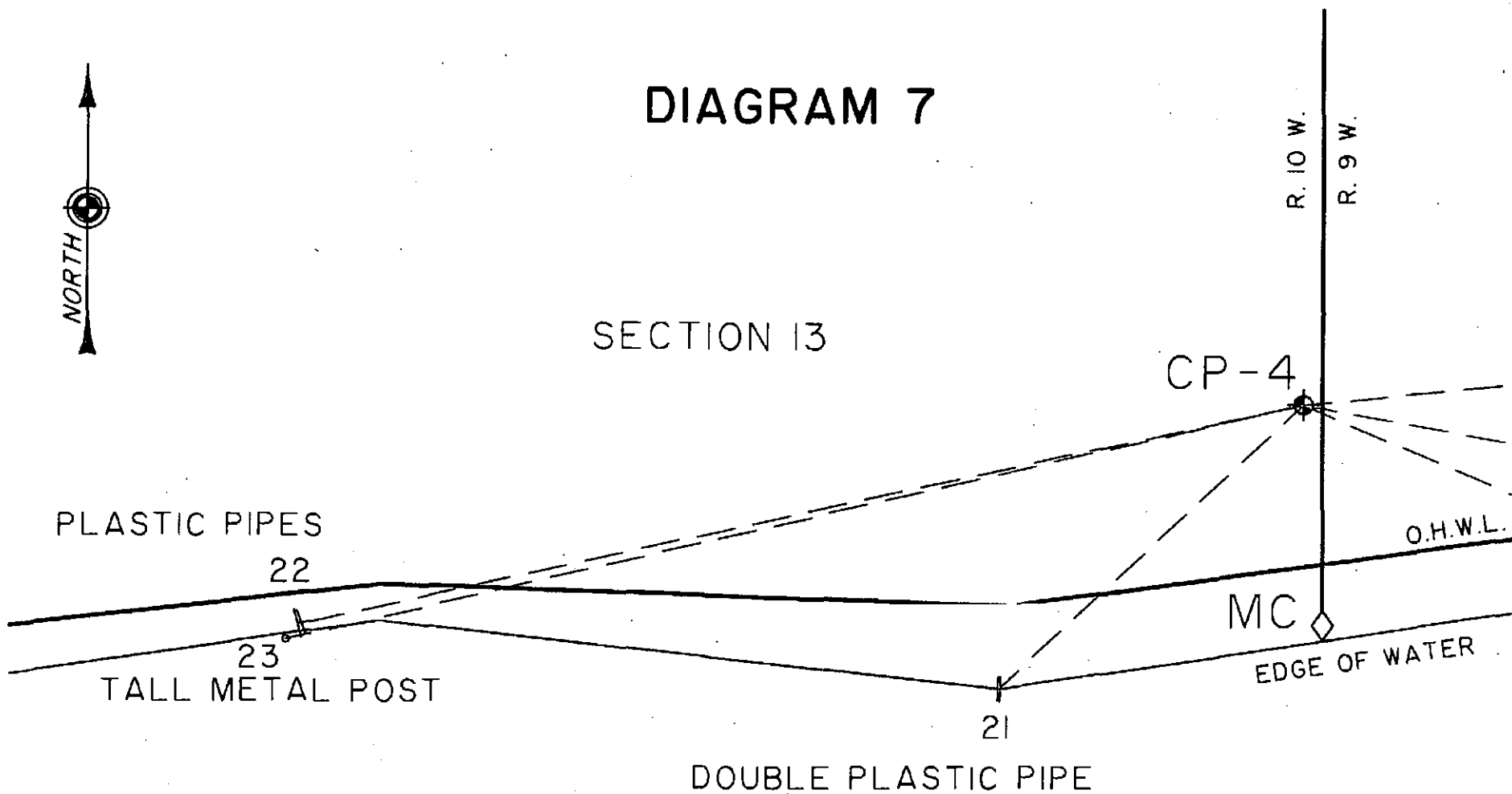


ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-4
18	47°28'57.315"	123°52'48.676"	N.84°27'09"E. 452.93'
19	47°28'56.443"	123°52'51.717"	S.79°34'27"E. 245.95'
20	47°28'56.384"	123°52'53.514"	S.66°55'31"E. 128.80'

DIAGRAM 7



SECTION 13



LAKE QUINAULT



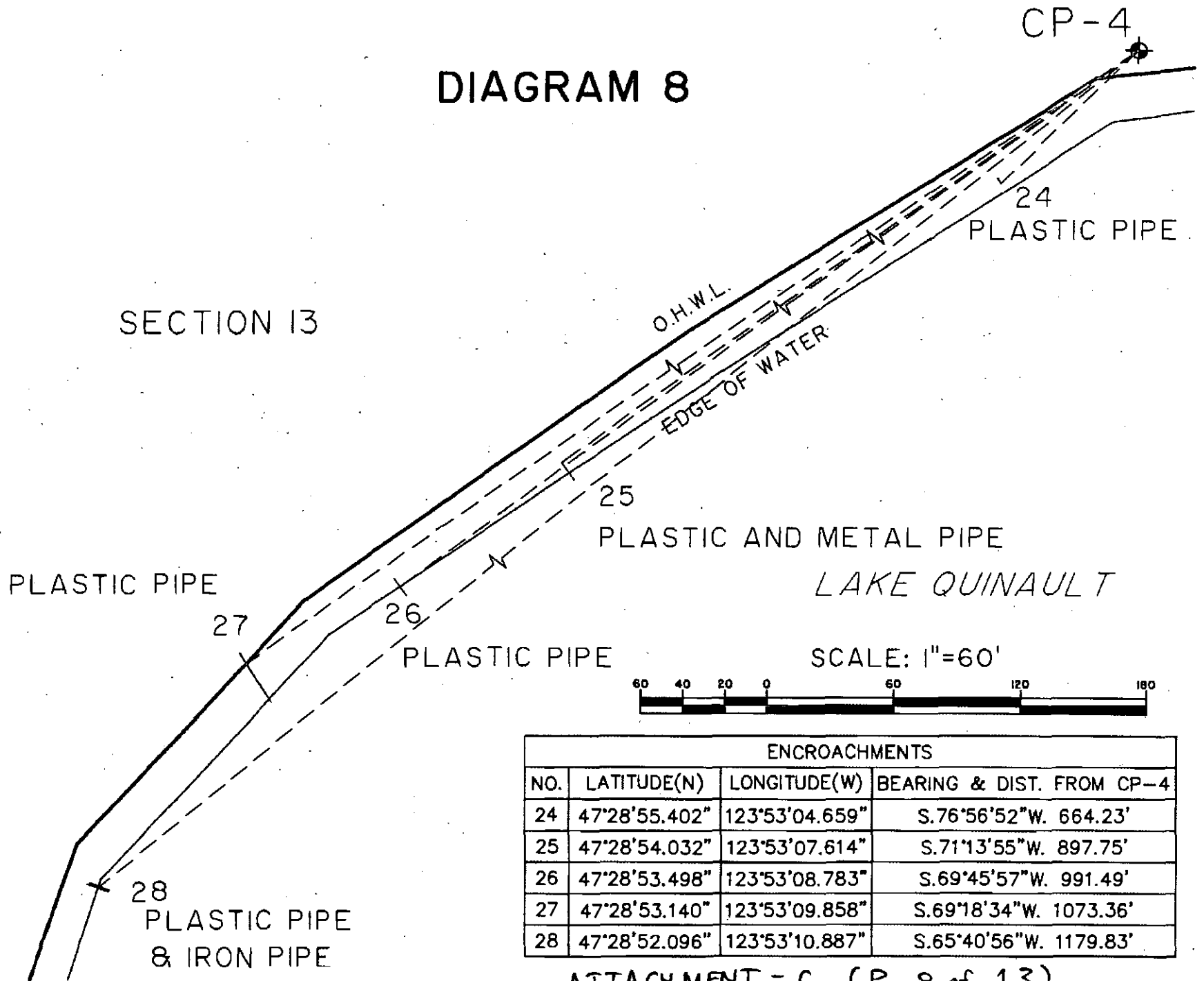
ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-4
21	47°28'55.730"	123°52'57.042"	S.46°40'14"W. 170.21'
22	47°28'55.986"	123°53'01.209"	S.77°30'50"W. 419.99'
23	47°28'55.922"	123°53'01.290"	S.76°49'48"W. 426.89'

ATTACHMENT - C (P. 7 of 13)

DIAGRAM 8



SECTION 13

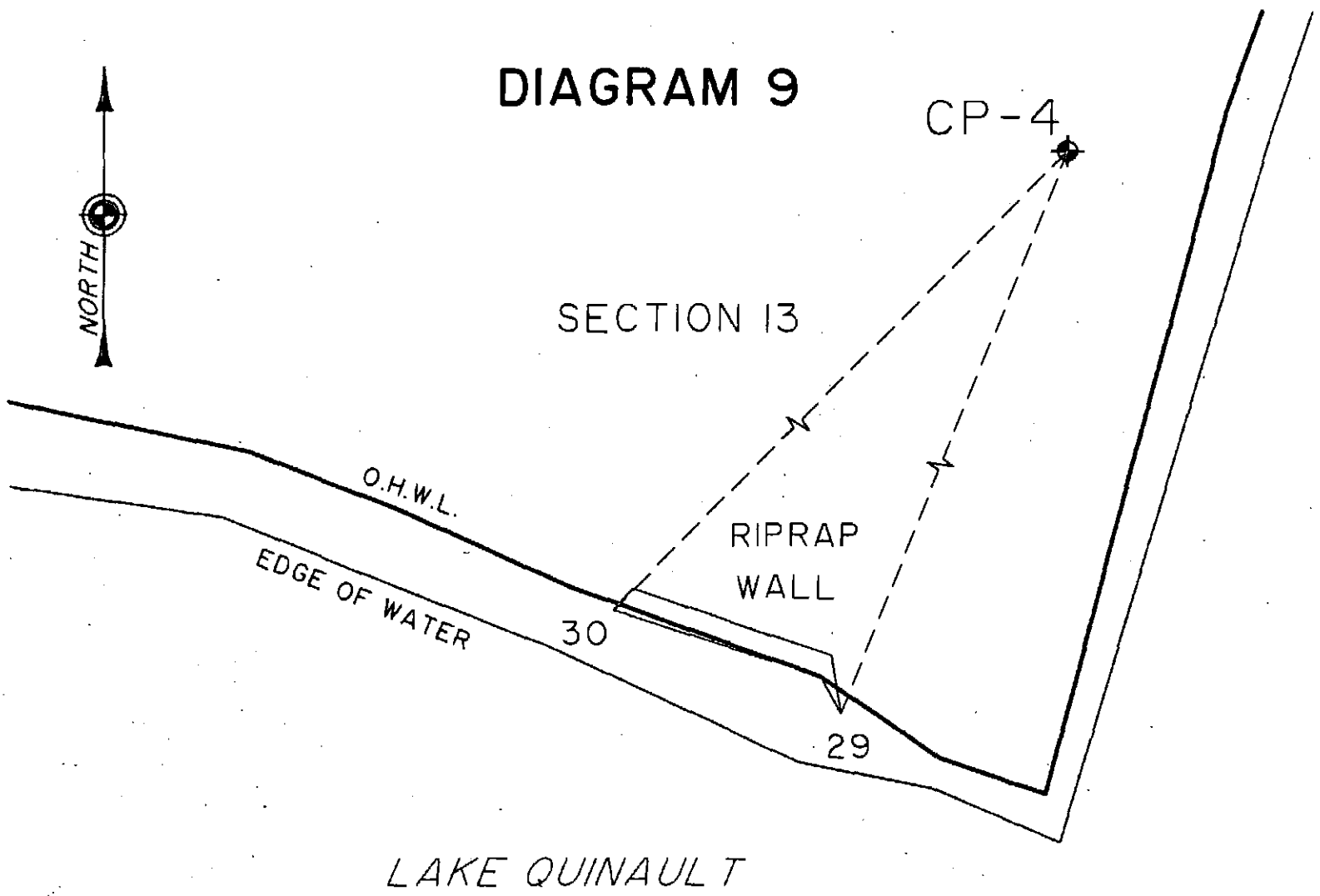


SCALE: 1"=60'



ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-4
24	47°28'55.402"	123°53'04.659"	S.76°56'52"W. 664.23'
25	47°28'54.032"	123°53'07.614"	S.71°13'55"W. 897.75'
26	47°28'53.498"	123°53'08.783"	S.69°45'57"W. 991.49'
27	47°28'53.140"	123°53'09.858"	S.69°18'34"W. 1073.36'
28	47°28'52.096"	123°53'10.887"	S.65°40'56"W. 1179.83'

DIAGRAM 9



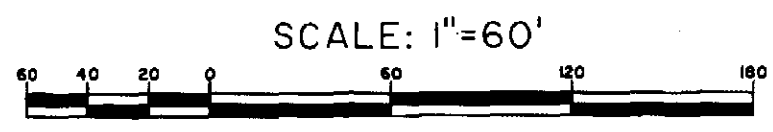
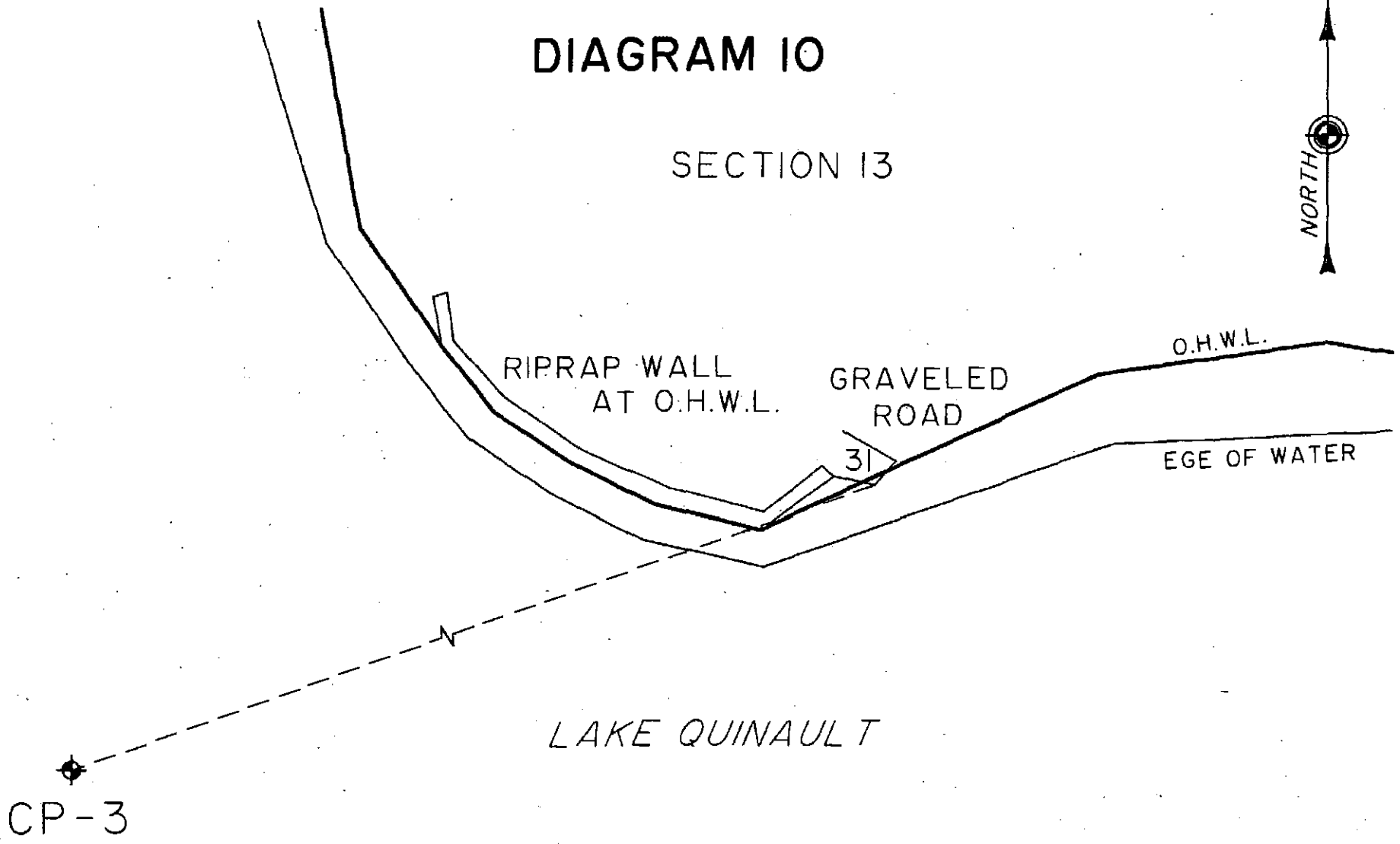
SCALE: 1"=60'



ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-4
29	47°28'48.006"	123°53'14.220"	S.55°24'01"W. 1583.94'
30	47°28'48.405"	123°53'15.526"	S.58°21'05"W. 1636.98'

DIAGRAM 10

SECTION 13



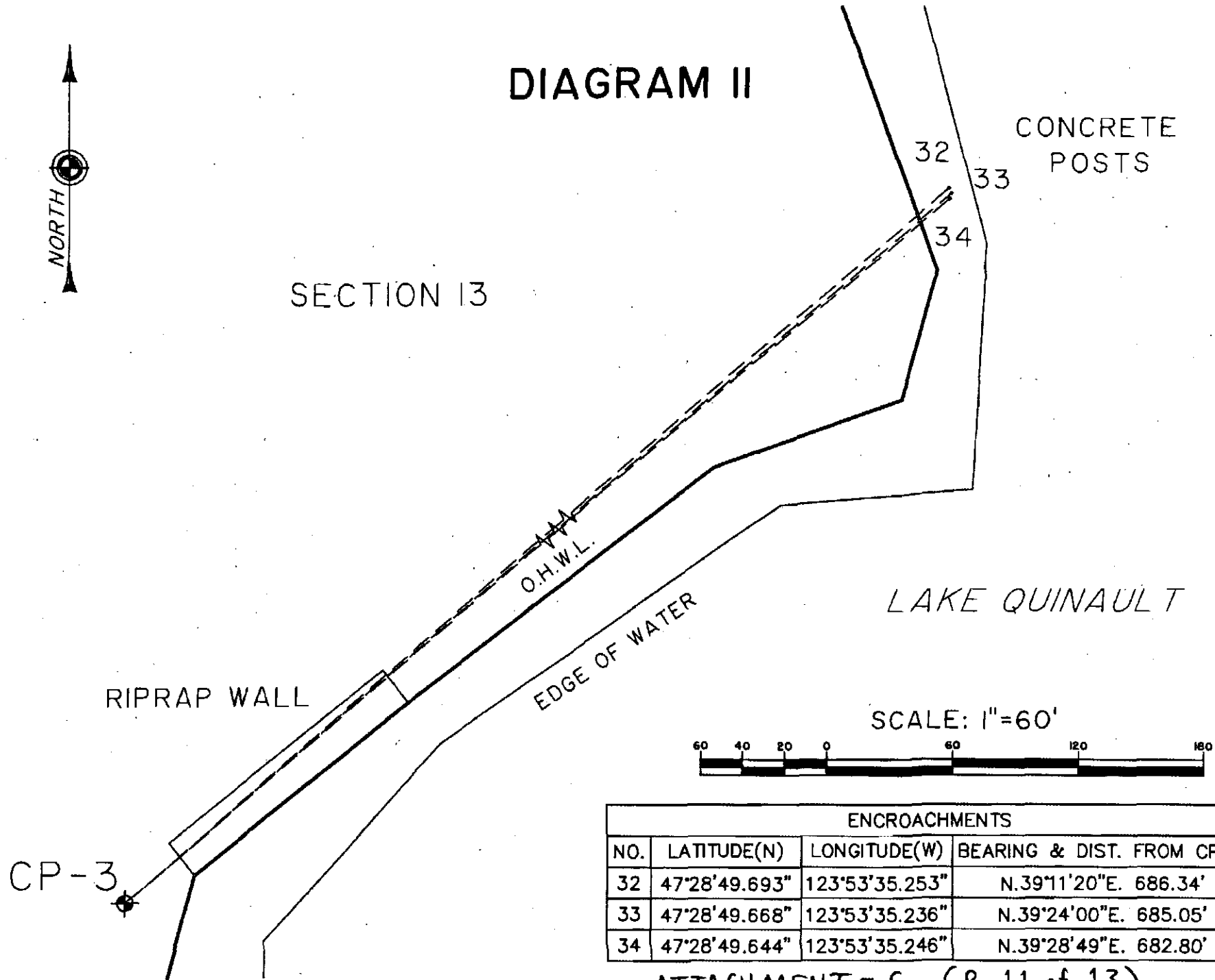
ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-3
31	47°28'48.524"	123°53'24.806"	N.70°14'43"E. 1223.26'

ATTACHMENT - C (P. 10 of 13)



DIAGRAM II

SECTION 13



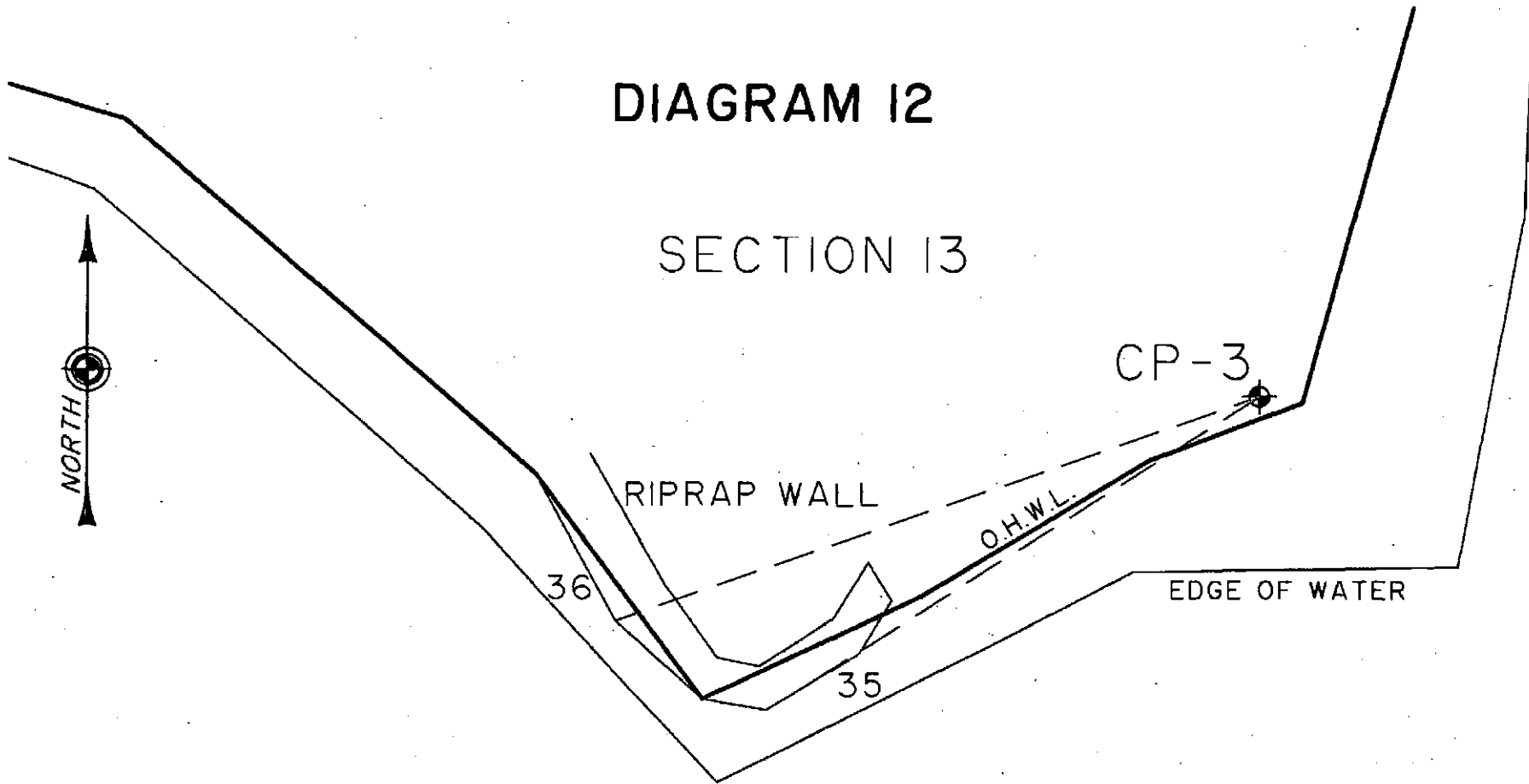
SCALE: 1"=60'



ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-3
32	47°28'49.693"	123°53'35.253"	N.39°11'20"E. 686.34'
33	47°28'49.668"	123°53'35.236"	N.39°24'00"E. 685.05'
34	47°28'49.644"	123°53'35.246"	N.39°28'49"E. 682.80'

DIAGRAM 12

SECTION 13



LAKE QUINAULT

SCALE: 1"=60'

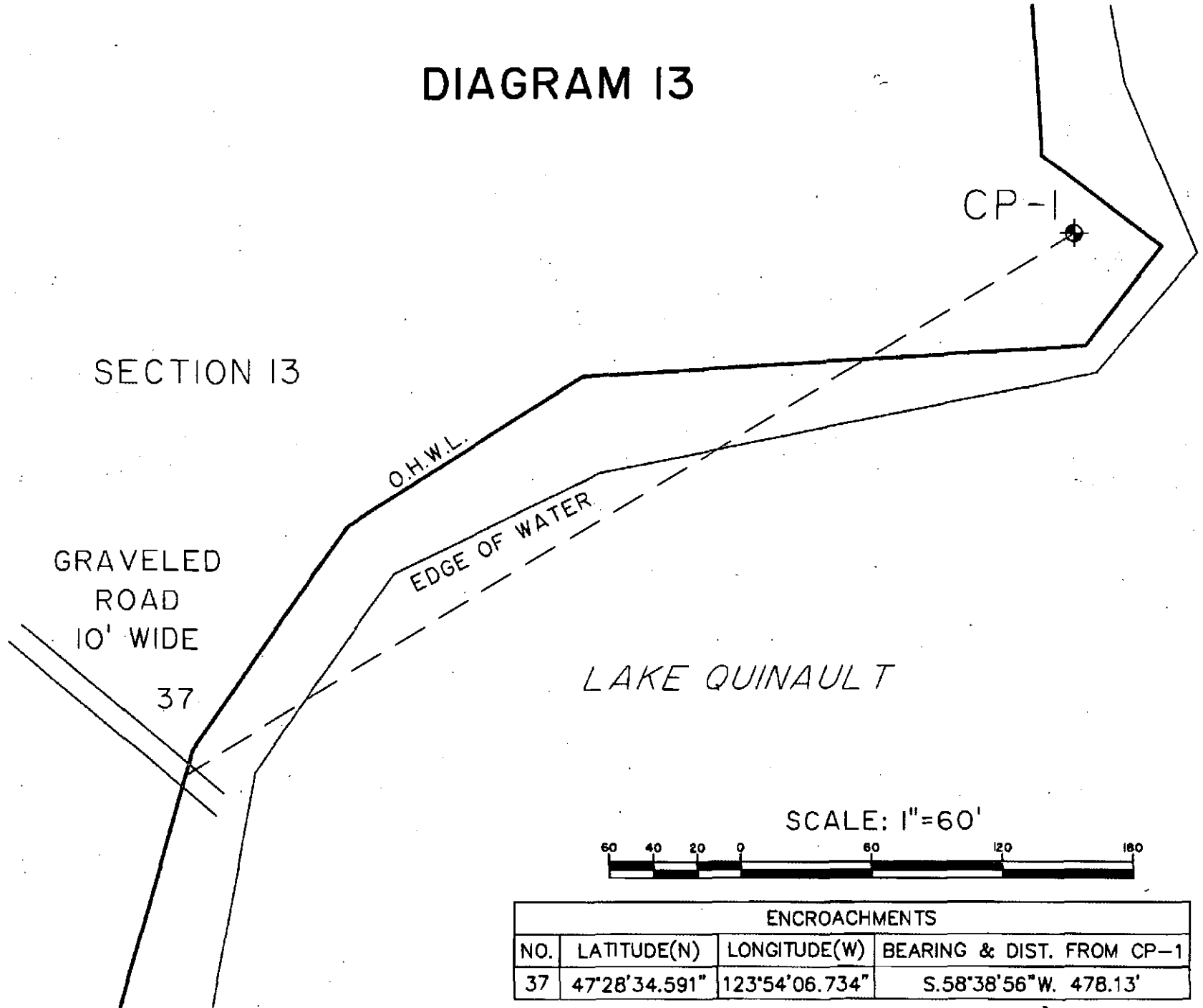


ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-3
35	47°28'43.246"	123°53'44.324"	S.57°22'08"W. 224.96'
36	47°28'43.584"	123°53'45.164"	S.70°35'55"W. 262.00'

ATTACHMENT - C (P. 12 of 13)



DIAGRAM 13



ENCROACHMENTS			
NO.	LATITUDE(N)	LONGITUDE(W)	BEARING & DIST. FROM CP-1
37	47°28'34.591"	123°54'06.734"	S.58°38'56"W. 478.13'

EXHIBIT M

Quinault Indian Nation Position Description

POSITION TITLE: Freshwater Ecologist (Water Quality)

8201

JOB SUMMARY: The Fresh Water Ecologist is expected to develop a water quality and management program. This will involve developing a non-point pollution prevention program (Sec. 319, already approved.) Will work towards integrating the plan into existing land use and fisheries programs. Will contribute to development of watershed plans. Serves as the leader of one or more field projects in the areas of limnology and aquatic ecology (to include riparian issues) for the Division. This individual is responsible for the basic planning, sampling design, activity implementation and monitoring, data analysis, and reporting associated with such projects, as specified by the Environmental Protection Division Manager.

Responsible to perform and oversee the performance of various fields, laboratory and statistical duties related to water resources managed by the Quinault Nation.

Coordinates closely with other project biologists in Environmental Protection Division, as well as within the Fisheries and Forestry Divisions.

EXAMPLES OF WORK:

Organizes and conducts projects related to water resource management in the areas of water and soil chemistry and limnology. Projects can be of singular or recurrent nature. Determines with the aid of the EP Division Manager the extent of sampling necessary for prescribed standards of accuracy. This includes maintaining an EPA-approved QA/QC program for water sampling.

Designs and conducts studies and projects in stream ecology as they relate to the development of the watershed plan.

Selects and uses standardized statistical and research procedures; summarizes and evaluates collected data; prepares written summaries and progress reports.

Directs technicians in carrying out activities of projects.

Collects, enters, and processes computer data and text.

Participates in technical meetings concerning the tribal coordinated water quality program development.

Reviews permit applications to county and state agencies, and prepares Tribal comments as appropriate.

Performs other work as required.

MINIMUM QUALIFICATIONS:

Bachelor of Science Degree in natural sciences (limnology or aquatic ecology) or closely related field.

Five years of experience, two years at the Biologist 1 level or equivalent. MS Degree in appropriate discipline may be substituted for two years. Ph.D. may be substituted for three years.

Knowledge of quantitative techniques and procedures including study design, statistical methods, and sampling methods.

Understanding of fresh water biology, chemistry, with a basic working knowledge of hydrology.

Ability to express ideas effectively; ability to deal tactfully with the public; ability to learn moderately complex procedures and fisheries operations.

Ability to write technical reports.

Ability to work independently.

Ability to understand and accept direction.

Ability to lead and supervise.

DESIRED QUALIFICATIONS:

Experience with PCs, including standard word processing, spreadsheet, and database software.

Experience with water chemistry and analytical equipment used in the professional laboratory and field sampling.

Quinault Indian Nation Position Description

POSITION TITLE: Water Quality Technician [num]

JOB SUMMARY: The Water Quality Technician is expected to collect water quality as part of a comprehensive program dealing with both surface and subsurface waters within the Quinault Reservation. These data include those necessary for compliance with the Clean Water Act, ongoing water quality sampling, participation in water and watershed planning processes, and working with issues related to both point and non-point source pollution. The position shall monitor water within the Quinault Usual and Accustomed Hunting and Fishing area that may affect fish production. The position will work with other Departments within the Division of Natural Resources, and with other Divisions of the Quinault Indian Nation on water related issues.

Responsible to perform various field, and laboratory tasks related to water resources managed by the Quinault Nation.

Responsible for producing data in the form needed by the Water Quality Program Section Leader.

Coordinates closely with other employees of the Quinault Division of Natural Resources as needed.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

Work expected as part of this position may include:

1. Collect field data on water quality as directed by the Water Quality Program Section Leader.
2. Follow accepted QA/QC protocols.
3. Check data for errors.
4. Summarize data as defined by Water Quality Program Section Leader. Provide these data to Water Quality Program Section Leader.
5. Collect data as directed for a non-point pollution monitoring and prevention program.

6. Monitor water quality and quantity within the Quinault Usual and Accustomed Hunting and Fishing Area.
7. Participate in water related processes within the Quinault U&A (e.g. Chehalis Basin Partnership) as requested by the Water Quality Program Section Leader.
8. Respond to water quality violations.
9. Assist with flow monitoring program for Reservation waters.
10. Assist with ground water monitoring within the Quinault Reservation.
11. Follow EPA approved Quality Assurance/Quality Control program for water quality sampling program.
12. Complete necessary data summaries and other tasks necessary for reports as needed by grant funding or requests of the Quinault Indian Nation.
13. Participates in technical meetings concerning water related issues as requested by the Water Quality Program Section Leader. This will include the tribal coordinated water quality program.
14. Performs other tasks as required

MINIMUM QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Associate of Science Degree in natural sciences (e.g. limnology or aquatic ecology) or closely related field.

Three years of experience at the Technician 2 level or equivalent. Bachelor of Science Degree or Master of Science Degree in appropriate discipline may be substituted for experience.

Valid Washington State Drivers License required.

Knowledge of sampling techniques

Ability to follow complex sampling procedures.

Ability to express ideas effectively in English, both verbally and in writing.

Ability to deal tactfully with the public.

Ability to work independently.

Ability to understand and accept direction.

Ability to manage data under supervision of Water Quality Program Section Leader.

Comfortable working around swift deep bodies of water and slippery surfaces. Ability to swim.

DESIRED QUALIFICATIONS:

Experience with computer applications including Word, Excel and Access.

Experience with water chemistry and analytical equipment used in the professional laboratory and field sampling.

Basic understanding of fresh water biology, chemistry, and salmonid fish life history.

**Quinault Indian Nation
Division of Natural Resources
Job Description**

Position: Wetland Specialist

Salary: Pay Grade 7

Location: Quinault Division of Natural Resources, Taholah, WA

Duties and Responsibilities: This is a professional position. Its purpose is to provide on-Reservation expertise on wetland condition assessment and delineation.

1. Organize and implement a wetland condition survey on the QIR, leading and conducting the field work necessary.
2. Ground truth the GIS layer developed by a contractor in 2015 by in-the-field delineation of wetlands identified by the layer.
3. Manage paper work for wetland projects and write reports on work accomplished for EPA grant.
4. Enter data collected and summarize/analyze in reports.
5. Develop a study to prove or disprove theory that high pH on reservation waters is a natural condition created by sphagnum bogs.
6. Cooperate/ participate in Water Quality Program projects and field work.
7. Provide consultation/technical expertise to the Division Director and the Quinault Indian Nation Business Committee (QBC) on wetland issues, as required.
8. Maintain necessary files and databases.

Qualifications: The incumbent must possess a Bachelor of Science in Botany, Ecology, Soil Science, or a related field.

Required:

1. Knowledge of wetland ecology and wetland delineation.
2. At least two years of field experience working with wetlands.
3. Ability to analyze data and create reports.
4. Strong interpersonal skills.
5. Valid state driver's license.

Desired: Experience and formal training in:

- Wetland Ecology
- Wetland Delineation
- Botany

QUINAULT INDIAN NATION
POSITION DESCRIPTION

POSITION TITLE: HYDRAULIC OFFICER (E.P. BIOLOGIST 2) 8203

Duties and Responsibilities:

This is a technical position. Its purpose is to provide on-Reservation expertise on hydraulic and fish habitat issues. Provide consultation/technical expertise to the Division Director and the Quinault Indian Nation Business Committee (QBC) as required. Participate as required in the implementation of the QIN Forest Management Plan. Issue Hydraulic Project Approvals (HP As) for projects as required by Quinault Indian Nation laws and policies. Monitor compliance with these permits during construction and after activities are completed. Track open HPA's to assist other staff in knowing where permitted activity is occurring. 6. Close out HPA's for complete projects. Maintain necessary files and databases. Participates in the Interdisciplinary Team process for on-Reservation timber sale development. Provides necessary technical expertise to QIN Forestry and BIA Forestry staff (i.e. marking riparian management zones).

Qualifications:

The incumbent must possess a Bachelor of Science in Fisheries or a related field, and at least one year of applicable experience. Specific knowledge of fish passage is critical. Specific knowledge of timber harvest and road construction and their effects on fish habitat are critical.

Required:

Knowledge of fish passage through culverts and other artificial structures.

Knowledge of fish habitat.

Knowledge of computer use including word processing, spreadsheets, and databases.

Strong interpersonal skills.

Must be able to work and communicate with co-workers, agency staff and general public.

Must be able to work and communicate with landowners and operators.

Ability to clearly express ideas, and technical knowledge both orally and in writing to both technical and non-technical audiences.

Valid state driver's license.

Desired:

Experience or formal training in:

Collaborative natural resources management,

Evaluation and monitoring of resource conditions

Salmonid fish life history

Riparian ecology