

ELY SHOSHONE TRIBE



LAND USE ORDINANCE

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ELY SHOSHONE TRIBE

TITLE 3—LAND USE ORDINANCE

CHAPTER 1—GENERAL

3.01.1 TITLE

This Ordinance shall be known and cited as the “Land Use Ordinance of the Ely Shoshone Tribe,” or the “Land Use Ordinance.”

3.01.2 AUTHORITY

The Land Use Ordinance is authorized by the inherent sovereign authority of the Ely Shoshone Indians of Nevada, the Treaty with the Western Shoshone of 1863, 18 Stat. 689, Article VI (1) (e), (i)–(m), Article XI (2) of the Constitution of the Ely Shoshone Tribe, and Ely Shoshone Tribal Council Ordinance 2011-EST/ORD-01.

3.01.3 FINDINGS

The Ely Shoshone Tribal Council hereby finds as follows:

- A. The Ely Shoshone Indian Reservation was set aside for the absolute and undisturbed use and occupation of the Ely Shoshone Tribe, as a home in perpetuity for the members of the Ely Shoshone Tribe, pursuant to Treaty with the Western Shoshone of 1863, 18 Stat. 689, and Executive Order 1681.
- B. The control and use of all lands and natural resources on the Reservation are directly connected to the ability of the Ely Shoshone Tribe to protect the peace, safety, health, morals, and general welfare of all residents of the Reservation, and the political integrity and economic security of the Ely Shoshone Tribe;
- C. The preservation of the Reservation land base is the lifeblood of the Ely Shoshone Tribe; and,
- D. Ely Shoshone Tribal members have a deeply-rooted traditional and cultural connection with the land that is so integrally related to the members’ well-being and overall Tribal morale that any infringement on the Tribe’s ability to control the use of lands and natural resources on the Reservation directly imperils the political integrity, the economic security, and health or welfare of the Ely Shoshone Tribe.

3.01.4 POLICY

In light of the foregoing findings, it is the policy of the Ely Shoshone Tribe to:

- A. Preserve all Reservation lands for the absolute and undisturbed use and occupation of the Ely Shoshone Tribe, as a home in perpetuity for the members of the Ely Shoshone Tribe;
- B. Control and regulate the use of all lands and natural resources on the Reservation in a manner that protects the peace, safety, health, morals, and general welfare of all residents of the Reservation, and the political integrity and economic security of the Ely Shoshone Tribe; and,
- C. Preserve, promote, and protect the character of the Ely Shoshone Indian Reservation by balancing the preservation of the traditional character of the Reservation with the current and future interests of the Ely Shoshone Tribe.

3.01.5 PURPOSE

The purposes of the Land Use Ordinance are to:

- A. Protect the political integrity of the Ely Shoshone Tribe;
- B. Protect the economic security of the Ely Shoshone Tribe;
- C. Protect the peace, health, safety, morals, and general welfare of the inhabitants of the Ely Shoshone Indian Reservation;
- D. Preserve the character of the Ely Shoshone Indian Reservation by balancing the preservation of the traditional character of the Reservation with the current and future interests of the Ely Shoshone Tribe;
- E. Conserve Tribal property and protect the natural resources found on Reservation;
- F. Develop Tribal resources;
- G. Provide for clean air and water, open space, and a quality environment;
- H. Maintain the percentage of Tribal and trust land on the Reservation;
- I. Preserve and protect the customs, traditions, culture, and way of life of the Ely Shoshone Tribe;
- J. Reduce non-conforming and conflicting land uses; and,
- K. Promote orderly economic growth of the Ely Shoshone Tribe.

3.01.6 INTERPRETATION

All provisions of the Land Use Ordinance shall be interpreted and applied in a manner that is consistent with the foregoing Findings, Policy, and Purposes.

- A. Subject to Section 3.01.7, the Ely Shoshone Tribal Land Use Committee will endeavor to interpret this Ordinance in a manner that does not undermine the purposes or provisions of the White Pine County Land Use Plan and Zoning Ordinance, provided such interpretation is not inconsistent with the purposes and provisions of this Ordinance.
- B. To the extent that provisions of the White Pine County Land Use Plan and

Zoning Ordinance do not contradict this Ordinance, or undermine the purposes of the Ordinance or the interests of the Ely Shoshone Tribe, the Ely Shoshone Tribal Land Use Commission may choose to use the White Pine County Land Use Plan and Zoning Ordinance as a guideline where a matter is not directly addressed by the Ely Shoshone Land Use Ordinance.

3.01.7 APPLICABLE LAW

- A. The Ely Shoshone Land Use Ordinance, and other duly enacted or approved Tribal land use laws, including the Ely Shoshone Comprehensive Land Use Plan, and Ely Shoshone Land Use Regulations are the only land use laws that apply to any land use matters on lands subject to this Land Use Ordinance, except as specifically controverted by federal law.
- B. The White Pine County Land Use Plan does not apply on the Ely Shoshone Reservation or any lands subject to this Land Use Ordinance. The White Pine County Zoning ordinance does not apply on the Ely Shoshone Reservation or any lands subject to this Land Use Ordinance. No land use laws of the State of Nevada apply on the Ely Shoshone Reservation or any lands subject to this Land Use Ordinance.

3.01.8 SCOPE

- A. The Land Use Ordinance shall apply to all lands and natural resources within the exterior boundaries of the Ely Shoshone Indian Reservation.
 - i. This Ordinance applies to all such lands and natural resources, regardless of who owns the land or natural resource, or how they may be owned, including but not limited to all trust and restricted status lands, all allotted lands, all assigned lands, and all lands owned in fee-simple or any other status or estate, whether owned by the Tribe, Tribal members, non-Indians, or non-members of the Ely Shoshone Tribe.
- B. The Land Use Ordinance also applies, except as may be controverted by federal law, to all lands and natural resources owned by the Ely Shoshone Tribe outside the exterior boundaries of the Ely Shoshone Indian Reservation. All land and natural resources acquired by the Ely Shoshone Tribe off the Ely Shoshone Indian Reservation shall be used in a manner consistent with the Findings, Policy and Purpose of this Ordinance.

3.01.9 EXEMPTIONS

The following land and natural resource uses are exempt from this Ordinance and regulations implementing this Ordinance:

- A. A landowner's personal agricultural use of his or her land for his or her immediate or extended family's food consumption;
- B. Uses of land or natural resources specifically exempted from Tribal regulation or allowed by expressly applicable federal statutes; and,
- C. Uses of land or natural resources specifically regulated by other laws of the Ely Shoshone Tribe, which are not inconsistent with the purposes of this Ordinance.

3.01.10 SOVEREIGN IMMUNITY

Nothing in this Land Use Ordinance shall be deemed or interpreted as a waiver of the sovereign immunity of the Ely Shoshone Tribe, any political subdivision of the Tribe, its officers, or employees. No provision herein authorizes suit against the Tribe, any political subdivision of the Tribe, its officers, or employees in any court other than the Ely Shoshone Tribal Court, except as specifically set forth in Chapter 15, and only for the purposes stated therein. Notwithstanding, nothing in this Ordinance shall be deemed as authorizing a suit for damages against the Tribe in any action arising under this Land Use Ordinance, unless the Ely Tribal Council by specific, express, and unequivocal Resolution should authorize such an action.

3.01.11 REPEAL OF INCONSISTENCIES

Any Resolution or Ordinance which conflicts in any way with provisions of this Ordinance is hereby repealed to the extent such Resolution or Ordinance is inconsistent with, conflicts with, or is contrary to the purpose of this Ordinance.

3.01.12 SEVERABILITY

This Ordinance and its various parts are hereby declared to be severable. If any part, section, article, paragraph, sentence, clause or phrase is adjudged to be unconstitutional, unenforceable, or invalid for any reason, it is hereby declared that the remainder of the Ordinance shall not be affected thereby.

3.01.13 RESPONSIBILITY OF THIRD PARTIES

It shall be the duty of all planners, architects, builders, contractors, subcontractors, and other Persons having to do with any use of land or natural resource, or the construction of buildings and structures subject to this Ordinance to see that a proper permit has been granted before such use or construction is commenced.

3.01.14 LEGAL ACTION

In case any building or structure is erected, constructed or used, or any land or natural resource subject to this Ordinance is used, in violation of any provision of this Ordinance, the Ely Shoshone Tribe, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate

action or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use. Notwithstanding this, or any other provision herein, the Ely Shoshone Tribe does not waive sovereign immunity, as set forth in Section 3.01.10.

3.01.15 EFFECTIVE DATE

This Ordinance is effective commencing September 30, 2011.

3.01.16 AMENDMENT

Amendments to the Land Use Ordinance or Official Zoning Maps shall be made as follows:

- A. Any interested person or entity, including the Land Use Commission, may propose an amendment to the Land Use Ordinance or an Official Zoning Map by Petition.
- B. A Petition to amend the Land Use Ordinance or an Official Zoning Map must be in writing and shall contain the following information:
 1. The name, address and telephone number of the person filing the petition; and,
 2. A citation to the provision(s) of the Land Use Ordinance or Official Zoning Map proposed to be amended along with an explanation of the purpose of the amendment, and the content of the proposed amendment.
- C. Formal consideration of any proposed amendment to the Land Use Ordinance or to an Official Zoning Map shall be initiated by written Resolution of the Land Use Commission in a duly called meeting at which a quorum is present;
- D. The Resolution of the Commission shall particularly describe the proposed amendment, the purpose of the proposed amendment, and the substance of the proposed amendment;
- E. Notice of the proposed amendment and a general description of the amendment shall immediately be published in the Newspaper for two weeks;
- F. After the second week of publication, the Land Use Commission shall accept written comments for at least ten days;
- G. After the period of written comments has closed, a public hearing shall be held by the Committee at a location on the Ely Shoshone Indian Reservation, at which all Tribal members and Reservation residents shall have the opportunity to submit verbal or written comments prior to Commission action on the proposed amendment;

- H. The Commission shall consider all written or verbal comments submitted, but is not bound to follow or respond to every comment submitted;
- I. After the public hearing the Commission shall make a decision to approve or deny the proposed amendment with any changes it may decide to make to the proposed amendment based on the comments received;
- J. If the Commission approves any proposed amendment to this Ordinance or an Official Zoning Map, the proposed amendment shall then be submitted to the Ely Shoshone Tribal Council for consideration and final enactment by Ordinance of the Council.

CHAPTER 2—DEFINITIONS

3.02.1 DEFINITIONS

Unless expressly defined in this Section or the regulations implementing this Ordinance, each term contained in the Land Use Ordinance shall have the meaning reasonably attributable thereto by the context of the provision in which the term is used, and in all cases every word shall be interpreted consistent with the Findings, Policy, and Purpose of the Land Use Ordinance.

- A. “Accessory Building or Use” shall mean a building or use of which are subordinate and/or incidental to that of the primary building or dwelling located on the same tract or parcel, such as barns, corrals, granaries, potato cellars, shops, sheds, and similar buildings or uses.
- B. “Access Road” shall mean a road that provides access to a specific destination as to a main highway or to a property that lies within another property.
- C. “Agricultural Zone or Use” shall mean an area where farming, tilling, raising crops, horticulture, gardening, composting, keeping, raising or grazing livestock, domestic animals and fowl, and similar uses may be permitted, but does not include any agriculture processing or packing plants, farm equipment sales, industrial or similar uses.
- D. “Apartment” shall mean a room or suite of two or more rooms in a multiple unit dwelling, occupied or suitable for occupancy as a rental residence for one person or family on an extended or non-transient basis.
- E. “Assisted Living Facility” shall mean a facility that provides supervision or assistance with activities of daily living, coordination of services by outside health care providers; and monitoring of resident activities to help to ensure their health, safety, and well-being of clients living within the facility.
- F. “Bicycle Track/BMX Track” shall mean a pathway or paved trail that is used mainly for recreational enjoyment on a bicycle.
- G. “Brownfield site” means a former industrial or commercial site whose use or redevelopment is constrained by potential site contamination, or the need for remedial activities leading to reuse of the site.

- H. “Building” shall mean any structure permanent or temporary with walls and roof affixed to the land built for the support, shelter or enclosure of persons, animals or chattels.
- I. “Burning Waste Toilets” shall mean toilets that burn waste. Burn Waste Toilets are to be installed only in the lodge and cabins in the upper portion of Parcel 2.
- J. “Cabin” shall mean a smaller, more private residential structure providing temporary accommodations and vacation facilities for guests in Cultural, Wildland, Open Space, or Recreation zones.
- K. “Campsite” shall mean the area in the upper portion of Parcel 2 that is reserved for camping and recreation.
- L. “Cemetery” means an area where the dead are buried, including columbariums, crematoriums, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of a cemetery.
- M. “Commercial” shall mean any use, business or commerce related activity, including building, relating to the purchase, sale, exchange or other transaction involving the wholesale or retail distribution of goods and services.
- N. “Commercial Farming” shall mean any farming activity that exceeds a landowner’s personal agricultural use of his or her land for his or her immediate or extended family’s food consumption.
- O. “Cultural” shall mean any act that has a connection to the customs, traditions, shared knowledge, values, or ways of living of the Ely Shoshone people, including the ceremonies, family gatherings, customs, traditions, spiritual practices, or distinctive ways of life of the Ely Shoshone Tribe, including the Newe Fandango.
- P. “Day Care Facility” shall mean a facility that provides the service of caring for infants and children operated by the Ely Shoshone Tribe.
- Q. “Development” shall mean the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings; any use or change in use of any buildings or land; any extension of any use of land or any clearing, grading, or other movement of land, for which a permit may be required pursuant to the Ordinance or this Code.
- R. “Dwelling or Dwelling Unit” means a building consisting of one or more rooms that is used for residential purposes, but not including a hotel, motel, inn, mobile home or manufactured home park, or any other similar profit oriented commercial venture.
- S. “Elders Housing Area” means housing for Tribal elders, as that term is defined by the Tribal Council.
- T. “Fee Land” shall mean land held by an individual in fee simple status which can be alienated or encumbered.
- U. “Fountain and Wading Pool” shall mean an ornamental structure in a small shallow pool where jets or water are pumped into the air.
- V. “Future Development” shall mean and indicate the opportunity and allowance of additional and future growth of developments of the Ely Shoshone Tribes.
- W. “Gaming” shall mean any games of chance or playing games for stakes, or engaging in the activity of gambling on the Ely Shoshone Reservation.

- X. “Health Clinic” shall mean a facility that provides primary health care to the needs of population.
- Y. “High Density Residential” shall mean housing categorized as a permanent area for multi-family dwellings from 2 to 4 units.
- Z. “High Tunnel/Hoop House” shall mean unheated greenhouses that can help market gardeners extend their growing season, or a simple, plastic-covered, passive solar-heated structure used to cover crops that are grown in the ground, including community gardens.
- AA. “Historic Rock House” shall mean the old wash house that is located on the Northeast corner of the Pine Street parcel. The Historic Rock House is a historic feature.
- BB. “Historic feature” means landmarks, buildings, sites, objects, structures, or natural features significant in Tribal history, prehistory, culture, or traditions are located. “
- CC. “Hobby Farm” shall mean a small farm that is maintained with expectation of being a secondary source of income, used for recreational purposes or managed as working farms for side income.
- DD. “Hotel, Motel, Inn” shall mean a building or group of buildings located upon the same tract or parcel of land intended to provide lodging to travelers and others on a short-term basis for compensation.
- EE. “Hydroponics Greenhouse” shall mean a greenhouse that cultivates plants in nutrient enriched water.
- FF. “Industrial” shall mean any use of land, including any related building, structure, or activity involving the manufacturing or mechanized processing of any goods or materials for commercial purposes, including but not limited to the warehousing and agricultural industry.
- GG. “Institution” shall mean a facility or building used for Tribal government, education, or public service facilities purposes, including Tribal administrative, court, other Tribal government offices, parking lots associated therewith, or a Tribal gymnasium, library, museum or other public facility and associated parking lots.
- HH. “Lease” shall mean a long term contractual encumbrance of a tract of land owned by one person for the benefit of another.
- II. “Lodge” shall mean a building providing temporary accommodations and vacation facilities for guests. Lodges may be constructed on the upper portion of Parcel 2 and will include a great room, kitchen, and panoramic view of the mountains and countryside.
- JJ. “Lot” shall mean a parcel of land capable of being used under this Ordinance, lawfully created as such in accordance with the subdivision law or ordinances in effect at the time of its creation and suitable for sale, lease, or separate use
- KK. “Low Density Residential” shall mean housing categorized as a permanent area for single family dwellings including accessory buildings, family gardening, and the raising of pets such as horses, cows, chickens, sheep, etc. Low density residential use may include small acreages of land from 2 to 5 acres on the fringes of the corporate area where residential uses may be harmoniously integrated with the raising of pets, such as a specified number of horses, cows, chickens, sheep, etc.

- LL. “Medium Density Residential” shall mean housing categorized as a permanent area for single family residential purposes limited to permanent single family dwelling units which may include attached garages and small accessory buildings. Single family mobile homes are permissible in a medium density zone.
- MM. “Mobile and Manufactured Home” shall mean a transportable, detached, single family dwelling intended for permanent occupancy which is more than thirty-two (32) feet in length and eight (8) feet in width, which by original design is capable of being moved on public streets and highways.
- NN. “Mobile Home Park” shall mean a tract of land developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.
- OO. “Natural Resources” shall mean materials or substances such as minerals, forests, water, and fertile land that occur in nature and can be used for economic gain.
- PP. “Nursing Home or Elderly Center” shall mean an establishment for providing bed care, chronic care for one or more persons, exclusive of relatives, who by reason of illness or physical infirmity are unable to care for themselves.
- QQ. “Old West Town” shall mean the tourist attraction designated to be developed on the lower portion of Parcel 2. The Old West Town will have a Main Street and possibly staged gun fights and other Old West activities.
- RR. “Open Space” means an area of mostly unimproved lands on which a significant portion of the natural vegetation is native grasses, grass-like plants, forbs, and shrubs.
- SS. “Pasture” shall mean grass covered land used for grazing livestock.
- TT. “Public Facility” building used for Tribal government, education, or public service facilities purposes, including Tribal administrative, court, other Tribal government offices, parking lots associated therewith, or a Tribal gymnasium, library, museum or other public facility and associated parking lots. The buildings and facilities should be assessable to the Tribal members and are used to assist them with their needs.
- UU. “Playground” shall mean an outdoor area provided for children to play on at a school or public park
- VV. “Racquetball and/or Handball Courts” shall mean a rectangular court used to facilitate games of racquetball and handball
- WW. “Recreation or Recreational” shall mean the activities or areas that are designated for human refreshment, interaction, diversion or amenity.
- XX. “Recreation Facility” shall mean a facility that provided the adequate space and equipment that is designated for human refreshment, interaction, diversion or amenity.
- YY. “Renewable Energy” shall mean energy that is generated from natural resources such as sunlight, rain, wind, and geothermal heat which is naturally replenished.
- ZZ. “Renewable Energy Use” shall mean a use of land which intends to harness renewable energy, such as solar or photovoltaic panels, and wind turbines. Such uses must be permitted by the Land Use Commission.
- AAA. “Reservation” shall mean the Ely Shoshone Indian Reservation and

includes: (i) all lands, the title to which is held in trust by the United States for the benefit of the Ely Shoshone Tribe or any individual; and, (ii) all lands within the exterior boundaries of the Ely Shoshone Indian Reservation, including all fee land within the boundaries of the Ely Shoshone Indian Reservation, and any rights-of-way on the Reservation; (iii) such other lands outside the boundaries of the Ely Shoshone Indian Reservation in which the Ely Shoshone Tribe have a reversionary interest, or as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Tribes; and, (iv) all tribal lands within the boundaries of White Pine County, Nevada.

- BBB. "Residential" shall mean the use of an area comprised primarily of structures to provide living accommodation for persons and as a dwelling unit.
- CCC. "Rest Area/ Visitors Center" shall mean an area off the main highway that provides parking, restrooms and information and displays of the local area.
- DDD. "Road Inventory" shall mean a comprehensive list and description of roadways.
- EEE. "RV Hookups" shall mean a fitting to facilitate and connect to the outside a recreational vehicle, allowing a water hose to be connected to provide fresh water from an external, pressurized supply.
- FFF. "Setback" shall mean the minimum distance between a structure or improvement and a lot line.
- GGG. "Shoshone Cloth" shall mean the sewing machine company operated by the Ely Shoshone Tribes.
- HHH. "Single Family Dwelling" means that the building is usually occupied by just one family which includes extended relatives, and consists of just one dwelling unit.
- III. "Small Lot" shall mean a lot that is 3,800 to 5,500 square feet specifically designed for placement of a single family dwelling trailer within a Medium or High Density Residential zone.
- JJJ. "Solar Collector" shall mean a device that is used to extract energy directly from the sun and convert the energy to a more usable and storable form.
- KKK. "Spot Zoning" shall mean the awarding of a use classification to an isolated parcel of land which is detrimental or incompatible with the use of surrounding area, particularly when such an act favors a particular member.
- LLL. "State of Nevada Highway Department" shall mean the state department that provides services and oversees the state owned and maintained highways.
- MMM. "Structure" shall mean anything constructed or located, which requires permanent location above, or below the ground or attached to something having a location on the ground, including but not limited to: buildings, bridges, culvert across streams, signs, fences, billboards, basketball and tennis courts, swimming pools, satellite dishes, antennas, yard lights, and walls used as fences if six feet in height or more.
- NNN. "Subdivision" shall mean the act of subdividing a larger portion of land into smaller lots.

- OOO. "Tennis Court" shall mean a paved court with a net that is designated for recreational enjoyment and the activity of tennis.
- PPP. "Trailer" shall mean a vehicle portable dwelling, building or structure which is thirty (30) feet or less in length and eight (8) feet or less in width and which is designed as a temporary dwelling for travel, recreational or vacation uses.
- QQQ. "Trailer Housing Complex" shall mean a group of single family housing trailer units fixated on small lots measuring between 3,800 to 5,500 square feet.
- RRR. "Tribal Member" shall mean any person who is an enrolled member of the Ely Shoshone Tribe of the Ely Shoshone Indian Reservation
- SSS. "Tribal Land" shall mean all land located within or outside the boundaries of the Ely Shoshone Reservation which is owned in fee simple, restricted fee, or any other fee estate by the Tribes, and any land held in trust for the Tribes by the United States located within or outside the boundaries of the Ely Shoshone Reservation.
- TTT. "Tribe" shall mean the Ely Shoshone Tribe of the Ely Shoshone Indian Reservation.
- UUU. "Truck Wash" shall mean a commercial building used to facilitate and accommodate large trucks and provide the service to wash them.
- VVV. "Veterans Housing Area" mean housing for veterans as that term is defined by the Tribal Council.
- WWW. "Walking Path" shall mean a path designated and developed for persons to walk on.
- XXX. "Walking Trail" shall mean a paved or gravel path that is used for recreational purposes to walk and enjoy the outdoors.
- YYY. "Waste Water Treatment Facility/Plant" shall mean a facility that receives effluent or influent wastewaters (and sometimes runoff accumulated in the collection system) from domestic and/or industrial sources and, by a combination of physical, chemical, and biological processes.
- ZZZ. "Wildland" shall mean lands which are to be left undeveloped, barred to entry by motor vehicles, and on which no grazing, logging, or mineral extraction is to be carried out, unless the Tribe is given appropriate notice and a permit for such use is issued by Land Use Commission.
- AAAA. "Yard" shall mean the area between any lot line and setback required thereon.
- BBBB. "Yard, Front" shall mean a yard extending across the full width of the lot, the depth of the yard being the minimum distance between the front lot line and part of a building closest to the front lot line, or to the required setback from the street if development is not present.
- CCCC. "Yard, Rear" shall mean a yard extending across the full width of the lot, between the most main building and rear lot line. The depth of the required rear yard shall be measured from the nearest point of the rear lot line toward the nearest part of the main building.
- DDDD. "Yard, Side" shall mean a yard between a main building and the side lot line, extending from the front yard to the rear yard. The width of the required side yard shall be measured from the nearest point of the side lot line toward the nearest part of the main building.

- EEEE. “Yurt” shall mean a small cabin with a raised wood floor, wood sides about 2 or 3 feet high, and canvas tenting materials for the upper sides and roof.
- FFFF. “Zone” shall mean a geographical area or district within the Reservation that is primarily designated for a particular type of use, and for which regulations are codified, as shown on the Official Zoning Maps of the Ely Shoshone Indian Reservation.

CHAPTER 3: LAND USE ZONES AND ZONING MAPS

3.03.1 LAND USE ZONES—ESTABLISHMENT

In order to accomplish the purposes of the Land Use Ordinance, the Reservation is hereby divided into Land Use Zones. Land Use Zones define the areas, boundaries, and classification of permissible uses of land and natural resources. The entire Reservation and all Tribal land shall be designated by the Land Use Commission as a part of the Land Use Zones described in Section 3.03.02.

3.03.2 LAND USE ZONES—DESCRIPTION

- A. Agricultural Zone – Agricultural Zone means the area where farming, tilling, raising crops, horticulture, gardening, composting, keeping, raising or grazing livestock, domestic animals and fowl, and similar uses may be permitted by the Land Use Commission. Agricultural processing plants, packing plants, farm equipment sales, or similar industrial uses are not Agricultural, and do not fall within the scope of allowable uses in an Agricultural Zone.
- i. Any person using land within an Agricultural Zone for commercial farming purposes shall obtain a Farming Permit from the Land Use Commission prior to conducting any farming activity, the cost of which shall be set by the Commission. Every person participating in commercial farming activity shall follow good farming and conservation practices which are consistent with the Findings, Policy, and Purposes of this Ordinance.
- B. Brownfield Zone – Brownfield Zone means an area where the Land Use Commission may permit uses consistent with Brownfield sites, including remedial activities designed to prepare the site for reuse, or redevelopment. No person, except for the Ely Shoshone Tribe, shall use land or natural resources in a Brownfield Zone, unless such person has first obtained a permit from the Land Use Commission.
- C. Cemetery Zone – Cemetery Zone means the area where the Land Use Commission may permit the burial of the dead including traditional or cultural ceremonial columbariums, crematoriums, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of a cemetery. The Tribe may use the above-referenced facilities in designated land use zones, and such activities are not commercial or industrial in nature because they are an expression of religious, traditional, and/or cultural burial practices.

- D. Ceremonial Zone – Ceremonial Zone means a specific area dedicated for Tribal members to perform or participate in traditional events, activities, or customs to celebrate, commemorate, or express the Ely Shoshone Tribal culture.
- E. Commercial Zone – means the area where the Land Use Commission may permit business or commerce related activity, including building, relating to the purchase, sale, exchange or other transaction involving the wholesale or retail distribution of goods and services. No person, except for the Ely Shoshone Tribe, shall use land or natural resources in a Commercial Zone for any purpose, unless such person has first obtained a permit from the Land Use Commission. Agricultural learning centers, hoop houses, high tunnels and greenhouses may be constructed in Commercial Zones. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commission.
- F. Conservation Project Zone – Conservation Project Zone means a specific area where the Land Use Commission may permit reintroduction of cultural vegetation conservation, or similar projects in coordination with the Forest Service or Bureau of Land Management, such as thinning, weed control, or other landscape restoration or preservation activities and reduction of cultural vegetation.
- G. Cultural Zone – Cultural Zone means a general area where Tribal members may participate in ceremonies, family gatherings, customs, traditions, spiritual practices, or distinctive ways of life of the Ely Shoshone Tribe, including the Newe Fandango. No person, except for enrolled members of the Ely Shoshone Tribe, shall use land or natural resources in a Cultural Land Use Zone for any purpose, unless such person has first obtained a permit from the Land Use Commission.
- H. High Density Residential Zone - Land designated as part of a High Density Residential Zone shall be used for Residential purposes as defined in Section 3.02.1, limited to permanent multi-family dwellings from 2 to 4 units. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commission.
- I. Historic Zone – Historic Zone means an area where landmarks, buildings, sites, structures, or natural features significant in Tribal history, prehistory, culture, or traditions are located. No person may disturb, alter, modify any historic landmark, building, site, structure, or natural feature without obtaining a permit from the Land Use Commission. No person may use land or natural resources in a Historic Zone unless that person strictly abides by rules for use established by the Ely Shoshone Tribe. No person, except enrolled Tribal members, may trespass upon a Historic Zone without a permit from the Land Use Commission.
 - i. The Land Use Commission shall take reasonable measures to protect the form, integrity, and material of historic features within Historic Zones in a manner that allows an efficient, contemporary use, while preserving those features of the land which are significant to its historical and cultural values.
- J. Industrial Zone – Land designated as part of an Industrial Zone may be

used for industrial uses, including but not limited to the manufacturing or mechanized processing of any goods or materials for commercial purposes, warehousing, and agricultural industry purposes. No person shall use land or natural resources in an Industrial Zone for any industrial purpose, unless specifically permitted by the Land Use Commission. Land or natural resources in an Industrial Land Use Zone may be used for any lawful and less intensive purpose subject to the appropriate permit from the Land Use Commission, and to such conditions as the Commission may set upon that permit. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commission.

- K. Institution/Public Facilities Zone – Land designated as part of an Institution/Public Facilities Zone shall be used for Tribal government, educational, or public service facilities purposes, including Tribal administrative, court, other Tribal government offices, parking lots associated therewith, or a Tribal gymnasium, library, museum, community hoop houses, or other public facility, and associated parking lots. No person, except the Ely Shoshone Tribal Government, shall use land or natural resources in an Institution/Public Facilities Land Use Zone for any purpose, unless such person has first obtained a permit from the Land Use Commission.
- L. Low Density Residential Zone - Land designated as part of a Low Density Residential Zone shall be used for Residential purposes as defined in Section 3.02.1, including single family dwellings with accessory buildings, family gardens, areas to raise pets such as horses, cows, chickens, sheep, etc. Low Density Residential Zone use may include hobby farms and small acreages of land from 2 to 5 acres on the fringes of the corporate area where residential uses may be harmoniously integrated with the raising of pets, horses, cows, chickens, sheep, etc. The Land Use Commission may choose to promulgate regulations regarding the number of pets which may be kept in Low Density Residential Zones. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commission.
- M. Medium Density Residential Zone - Land designated as part of a Medium Density Residential Zone shall be used for Residential purposes as defined in Section 3.02.1, limited to permanent single family dwelling units which may include attached garage or small accessory buildings. Single family mobile homes are permissible in medium density residential zoning. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commission.
- N. Open Space Zone – Open Space Zone means an area of mostly unimproved lands on which a significant portion of the natural vegetation is native grasses, grass-like plants, forbs, and shrubs or green space where the Land Use Commission may permit grazing. Designation of an area as ‘open’ or ‘open space’ does not mean that it is open for jurisdictional purposes as the term ‘open’ is defined in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).
- O. Recreation Zone - Land designated as part of a Recreation Zone shall be

used for Recreation purposes as defined in Section 3.02.1, including public parks, playgrounds, walking paths, green space, etc. No person may use land within a Recreation Zone unless the person strictly abides by all rules established by the Ely Shoshone Tribe for the use of such areas.

- P. Wildland Zone – Land designated as Wildland shall be preserved in its natural state as habitat for wildlife. No person shall use land or natural resources in a Wildland Land Use Zone for any purpose except hunting, fishing, and gathering as permitted by other Tribal laws.

3.03.3 ZONING MAPS

The Land Use Zones are set forth in the Official Zoning Maps. The Land Use Commission shall adopt, and may from time to time amend the Official Zoning Maps. The adopted Official Zoning Maps are, by this reference, incorporated into and made part of the Land Use Ordinance.

3.03.4 CUMULATIVE ZONING

This Ordinance recognizes the cumulative zoning concept, sometimes allowing less intense uses to exist in areas designated for more intense uses. The form of cumulative zoning established by this Ordinance does not exclude less intense uses in a zone of higher-intensity designation. For example, under cumulative zoning, agricultural use is allowed in areas zoned industrial, or for another example, single family residences may be constructed in an area zoned for multi-unit housing. Except where specifically excluded, cumulative zoning uses may be permitted by the Land Use Commission.

3.03.5 SPOT ZONING

This Ordinance does not allow Spot Zoning. The Land Use Commission may not award a use classification to an isolated parcel of land which is detrimental or incompatible with the use of surrounding area, particularly when such an act favors a Tribal member. However, a general plan or special circumstance such as historical value, environmental importance, or scientific value could justify special zoning for a small area.

3.03.6 LAND USE ZONE AMENDMENTS

Land use zone amendments may be made through application to the Land Use Committee, pursuant to 3.01.16 of this Ordinance.

3.03.7 PERMISSIBLE USES AMENDMENTS

Permissible use amendments may be made through application to the Land Use Committee, pursuant to 3.01.16 of this Ordinance.

CHAPTER 4: PERMITS

3.04.1 GENERAL PERMIT REQUIREMENT

No person may use or allow the use of any land or natural resources subject to the Land Use Ordinance, except as expressly exempted or allowed by this Ordinance and duly permitted by the Land Use Commission.

A. Cultural and Ceremonial Use Exception

Enrolled members of the Ely Shoshone Tribe do not need a permit to conduct or participate in ceremonies or cultural activities.

3.04.2 CONSISTENT USE REQUIREMENT

Every use of land or natural resources must be consistent with the Findings, Policy, and Purpose of this Ordinance, and in keeping with the designated Land Use Zones.

3.04.3 PERMITTING PROCESS

A. The Land Use Commission shall administer the permit application process, but may delegate its administrative duties under this chapter.

B. The Land Use Commission shall promulgate regulations governing the details of the permit application process to implement and administer the following general permit application requirements:

I. Application Process:

1. All applications to use land or natural resources subject to this Ordinance shall be made to the Land Use Commission. The applicant of the land or natural resource shall obtain an application for the appropriate permit from the Land Use Commission. The applicant shall complete the application, verify the truth and accuracy of the content with his or her notarized signature, and submit the completed application to the land use policy commission. The applicant shall comply with any requests from the Land Use Commission regarding additional information, meetings, and hearings.

II. Pre-application conference:

1. Prior to issuing an application, the Land Use Commission shall hold a pre-application conference with the applicant. The purpose of the pre-application conference is for the Land Use Commission to assist the applicant in determining what permit(s) the applicant may need. The Land Use Commission shall provide information about the permits available and the applicable processes under tribal laws. The applicant shall obtain independent advice, however, and shall not rely on the information provided as legal advice. The Land Use Commission shall hold a pre-application

conference with the applicant within three (3) days of applicant's request for a permit or application.

III. Application content:

1. Form. Every application shall be on a form approved and issued by the land use policy commission and shall contain at least the following information:
 - A. The name and address of the applicant and all other tribal members of any interest in said real property or natural resource;
 - B. A concise factual description of the applicant's property interest in said real property or natural resource;
 - C. A concise factual description of the location and physical description of land or natural resource;
 - D. A concise factual description of the proposed activity to be undertaken with regard to the land or natural resources, including construction, deconstruction, or other activity, and identification of the nature of the use described in chapter 2; and,
 - E. A signed statement by the applicant that the applicant has obtained all underlying permits and satisfied related requirements of any other applicable tribal, federal, or state law or regulations.
 - F. Complete application. If any application is incomplete, inaccurate, false, or fails to fully describe the proposed activity it shall be denied.

IV. Filing:

1. Every application shall be filed with the Secretary of the Land Use Commission, Ely Shoshone Tribe, 16 Shoshone Circle, Ely, Nevada 89301. The application shall be accompanied by a fee set according to a fee schedule implemented by the Land Use Commission made payable to the "Ely Shoshone Tribe."

V. Receipt of application:

1. No application may be received by the Land Use Commission unless it is complete. No application may be received by the Land Use Commission until it has been reviewed and approved by the Land Use Commission as a complete application, at which time the Land Use Commission will stamp the application as 'received.'

VI. Initial review procedure:

1. Within ten (10) days of receiving an application, the Land Use Commission shall commence the following initial review procedure:
 - A. Underlying permits. The Land Use Commission shall first determine what, if any tribal procedures and underlying permits may be required for the proposed activity;
 - B. Routing. The Land Use Commission shall route the application to the Tribal department(s), federal agency, or state agency in charge of issuing any underlying permit;
 - C. Environmental Review. The Land Use Commission may

request any environmental review, assessment, or impact statement it deems relevant;

D. Departmental Review. The Land Use Commission may request the review and recommendation of any Tribal department on any application; and,

E. Hearing. The Land Use Commission shall determine whether a hearing on the application is appropriate.

2. Once the Commission has completed the initial review procedure, it shall inform the applicant about the status of the application.
3. The time for the Commission to address the application begins to run once the initial review procedure has been completed.

VII. Hearing determination:

1. A hearing determination shall be made on every application as part of the initial review procedure. Whether a hearing is granted on any application is a decision within the Land Use Commission's sole discretion. Factors to be considered by the land use policy commission in making a hearing determination include, but are not limited to:

- A. Whether a hearing was requested by the applicant;
- B. Whether a hearing will aid in producing or clarifying related facts;
- C. Whether significant policy questions related to the application exist for which public comment would be informative; and,
- D. Whether holding a hearing will further the efficient administration of due process and justice in light of the purposes of the Land Use Ordinance.

VIII. Hearing.

1. If the Land Use Commission determines that a hearing or hearings will be granted, the Commission shall fix a time and place for the hearing(s) and provide notice of such hearings to the tribal attorney's office, the tribal secretary, and to such other persons as the Commission may deem necessary. Such notice shall be mailed not less than ten (10) days prior to the hearing(s) scheduled. Such hearing(s), as the Commission may deem appropriate, shall be conducted as scheduled with all persons present being given the opportunity to express their positions on the application or matter before the Commission. Such hearings shall be open to the public, according to procedures established by the Commission.

3.04.4

PERMANENT HOMELAND PROTECTION – NO TRESPASSING

- A. The Ely Shoshone Indian Reservation has been set aside as the permanent homeland for the Ely Shoshone Tribe. No person may use land or natural resources on the Reservation in a manner inconsistent with this purpose.
- B. The Ely Shoshone Reservation is a 'closed' Reservation, as that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S.

408 (1989). The Ely Shoshone Indian Reservation is closed to the general public, except as described herein. No portion of the Ely Shoshone Indian Reservation is ‘open’ as that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).

- C. Entry onto the Ely Shoshone Indian Reservation is restricted to: enrolled Tribal members; individuals eligible for membership in the Ely Shoshone Tribe; relatives of Tribal members; members of other federally recognized tribes; federal agency employees; employees of the Ely Shoshone Tribe; patrons of businesses on the Reservation; and persons with *bona fide* property or business interests on the Reservation, including those persons present as authorized by a lawfully recorded right of way.
- D. Except for Tribal members and those specifically listed herein, no person may trespass on the Ely Shoshone Indian Reservation without express written permission from the Land Use Commission.

CHAPTER 5: PARCEL # 3 ZONING AND LAND USE

3.05.1 PARCEL # 3—DESCRIPTION

Parcel # 3 consists of approximately 1,994 acres located on the east side of Highway 6 at the base of Ward Mountain, Sections 9, 16, 17, 19, 20, 21, 29, and 30 Township 15 North, Range 62 East, M.D.B&M., specifically identified as Parcel 3 on the “Ely Shoshone Expansion” on the Eastern White Pine County map dated November 29, 2006, referenced in Subtitle F, Section 361(a)(2) of the White Pine county Conservation, Recreation, and Development Act of 2006. Parcel # 3 has historical, spiritual, and traditional significance for the Ely Shoshone Tribe.

3.05.2 PARCEL # 3—ZONING DESIGNATION

- A. All land in Parcel # 3 is limited to traditional and customary uses, and stewardship conservation for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. Parcel # 3 includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Cemetery Zone;
 - ii. Ceremonial Zone;
 - iii. Conservation Project Zone;
 - iv. Cultural Zone;
 - v. Open Space Zone; and,
 - vi. Wildland Zone.

3.05.3 PARCEL # 3—PERMISSIBLE USES

- A. Cemetery Use: Land within Parcel # 3 specifically designated on the applicable Official Zoning Map as Cemetery Zone land may be used for

Cemetery purposes as defined in Section 3.03.2, provided that a permit is first obtained from the Land Use Commission. Cemetery use by the Tribe is not industrial or commercial in nature due to the cultural and traditional purpose of such use.

- B. Ceremonial and Cultural Use: Ceremonial and Cultural use of any land within Parcel # 3 by enrolled Tribal members is permissible.
 - i. Enrolled Tribal members do not need to obtain a permit from the Land Use Commission in order to engage in Ceremonial or Cultural activities on Parcel # 3.
 - ii. In order to participate in Ceremonial or Cultural use activities on Parcel # 3, non-members of the Ely Shoshone Tribe and non-Indians must obtain a permit from the Land Use Commission.
 - iii. Ceremonial and Cultural uses may include: family gatherings, traditional gatherings, cultural retreats, historical sites or interpretive trails, spiritual activities, sweat lodges, etc.
- C. Conservation Project Use: Specific areas of land within Parcel # 3 may be used for conservation projects, in coordination with the Forest Service or Bureau of Land Management, such as thinning, weed control, or other landscape restoration or preservation activities, as permitted and designated by the Land Use Commission.
 - i. No conservation projects may be undertaken by the Forest Service, the Bureau of Land Management, or other agency or person without a permit from the Land Use Commission.
- D. Open Space Use: Except for land designated as a Cemetery Land Use Zone or a specified Ceremonial Land Use Zone, land within Parcel # 3 may be used as Open Space, provided that a permit is first obtained from the Land Use Commission.
- E. Wildland Use: Land within Parcel # 3 not designated as a Cemetery or being used for Cultural or Ceremonial use shall be conserved as habitat for wildlife for the benefit of the Ely Shoshone Tribe and its members.
 - i. The Land Use Commission shall negotiate and enter into a Habitat Management Agreement with the Bureau of Land Management and/or Forest Service as may be necessary.

3.05.4 PARCEL # 3—IMPERMISSIBLE USES

- A. All uses not specifically permitted by Section 3.05.3 are impermissible.
- B. Prohibited uses of Parcel # 3 lands include:
 - i. permanent residential development;
 - ii. permanent recreational development;
 - iii. commercial use; and,
 - iv. gaming, except traditional hand games and other similar traditional games in connection with cultural activities may be conducted provided that a permit is first obtained from the Land Use Commission.

CHAPTER 6: JV WALKER PARCEL ZONING AND LAND USE

3.06.1 JV WALKER PARCEL—DESCRIPTION

The JV Walker parcel consists of approximately eleven (11) acres in the Terrace subdivision of the City of Ely, located in the SW ¼ of Section 15 T. 16 N., R. 63 E., M.D.B. & M.

3.06.2 JV WALKER PARCEL—ZONING DESIGNATION

- A. All land in the JV Walker parcel is limited to residential, public facility, and recreational uses for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. The JV Walker parcel includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Medium Density Residential Zone;
 - ii. Public Facility Zone; and,
 - iii. Recreation Zone.

3.06.3 JV WALKER PARCEL—PERMISSIBLE USES

- A. Medium Density Residential Use: Land within the JV Walker Parcel specifically designated on the applicable Official Zoning Map as Medium Density Residential Zone land may be used for medium density residential purposes as defined in Section 3.03.2
 - i. The dwelling units in the JV Walker Parcel may only be used as single family dwelling units.
- B. Institution/Public Facility Use: Land within the JV Walker Parcel specifically designated on the applicable Official Zoning Map as Institution/Public Facility Zone land may be used for Institution or Public Facility purposes as defined in Section 3.03.2.
 - i. Institutions and Public Facilities, including the Tribal administrative offices, other Tribal government buildings, and the Tribal gymnasium, may only be used in accordance with rules for facility use established by the Ely Shoshone Tribe.
 - ii. Until parking facilities are constructed on in the playground, the area designated as future parking can be used as a playground.
- C. Recreational Use: Land within the JV Walker Parcel specifically designated on the applicable Official Zoning Map as Recreation Zone land may be used for Recreation purposes as defined in Section 3.03.2.
 - i. The park and playground located on the JV Walker Parcel may only be used in accordance with rules established by the Ely Shoshone Tribe for use of the park, playground equipment, basketball court, etc.
 - ii. A portion of the park may be used by the Ely Shoshone Tribe in

the future for parking spaces, as depicted on the applicable Official Zoning Map.

- iii. The gully behind the dwelling units on the southeast side of J.V. Walker Street may be used for recreational uses, including a walking path, amphitheater, or Fandango site.

- D. Renewable Energy Use: Land within the JV Walker parcel designated on the applicable Official Zoning Map as Medium Density Residential Use and Institution/Public Facility Use is permissible for renewable energy use.

3.06.4

JV WALKER—IMPERMISSIBLE USES

All uses not specifically permitted by Section 3.06.3 are impermissible.

CHAPTER 7: PINE STREET PARCEL ZONING AND LAND USE

3.07.1 PINE STREET PARCEL—DESCRIPTION

The Pine Street parcel consists of approximately ten (10) acres originally occupied by the Ely Indian colony as a camp near the city of Ely, Nevada and conveyed to the United States in trust for the Ely Shoshone Tribe by the Act of June 27, 1930, 46 Stat. 820, located in the NW ¼ of Section 21 T. 16 N., R. 63 E., M.D.B. & M.

3.07.2 PINE STREET PARCEL—ZONING DESIGNATION

- A. All land in the Pine Street parcel is limited to residential, commercial, historic, and agricultural uses for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. The Pine Street parcel includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Medium Density Residential Zone;
 - ii. Historic Zone;
 - iii. Agricultural Zone; and,
 - iv. Commercial Zone.

3.07.3 PINE STREET PARCEL—PERMISSIBLE USES

- C. Medium Density Residential Use: Land within the Pine Street Parcel specifically designated on the applicable Official Zoning Map as Medium Density Residential Zone land may be used for medium density residential purposes as defined in Section 3.03.2.
 - i. The dwelling units in the Pine Street Parcel may only be used as single family dwelling units.
- D. Historic Use: Land within the Pine Street Parcel specifically designated on the applicable Official Zoning Map as a Historic Zone may be used for Historic purposes as defined in Section 3.03.2.
 - i. The Historic Rock House located on the Pine Street Parcel is a historic feature.
 - ii. The Land Use Commission shall promulgate regulations regarding the use of the Historic Rock House site and structure.
- E. Institution/Public Facility Use: Land within the Pine Street Parcel specifically designated on the applicable Official Zoning Map as Agricultural Zone land may be used for Agricultural purposes as defined in Section 3.03.2.
 - i. The designated land in the northeast corner of the Pine Street Parcel, surrounding the existing commercial building may be used for agricultural purposes, including a hoop house, high tunnel, greenhouse, composting or recycling.
 - ii. The designated land in the northeast corner of the Pine Street Parcel, surrounding the existing commercial building may be used

- for the construction of an agricultural learning center.
- F. Commercial Use: Land within the Pine Street Parcel specifically designated on the applicable Official Zoning Map as Commercial Zone land may be used for Commercial purposes as defined in Section 3.03.2.
 - i. Commercial activity on the designated land in the northeast corner of the Pine Street Parcel may be permitted by the Land Use Commission in the existing building, including day care, cloth or clothing, or other Tribal enterprises.
 - ii. Tribal government use of the existing structure in the Pine Street Commercial Zone is hereby designated as an acceptable less intensive use consistent with Section 3.03.4.
 - G. Renewable Energy Use: Land within the Pine Street parcel designated on the applicable Official Zoning Map as Medium Density Residential Use, Institution/Public Facility Use, and Commercial Use may be used for renewable energy purposes, but the Renewable Energy Use must be permitted by the Land Use Commission.

3.07.4 PINE STREET—IMPERMISSIBLE USES

All uses not specifically permitted by Section 3.07.3 are impermissible.

CHAPTER 8: 90-ACRE PARCEL ZONING AND LAND USE

3.08.1 90-ACRE PARCEL—DESCRIPTION

The 90-Acre parcel consists of approximately ninety (90) acres conveyed to the United States in trust for the Ely Shoshone Tribe pursuant to P.L. 95-191, 91 Stat. 1406, in 1977, located in the north half of the southeast quarter and the northeast quarter of the northeast quarter of the southwest quarter of S. 22, T. 16 N., R. 63 E., M.D.B. & M.

3.08.2 90-ACRE PARCEL—ZONING DESIGNATION

- A. All land in the 90-Acre parcel is limited to residential, institutional/public facility, commercial uses for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. The 90-Acre parcel includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Brownfield Zone;
 - ii. Commercial Zone;
 - iii. Low Density Residential Zone;
 - iv. Medium Density Residential Zone;
 - v. High Density Housing Zone
 - vi. Industrial Zone;
 - vii. Institution / Public Facilities Zone;
 - viii. Open Space Zone; and,
 - ix. Recreation Zone.

3.08.3 90-ACRE PARCEL—PERMISSIBLE USES

- B. Brownfield Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as Brownfield Zone may be used for purposes consistent with Brownfield sites as defined by Section 3.03.02.
 - i. The Brownfield Zone on the West end of the 90-Acre parcel is a Brownfield site.
 - ii. To the extent practicable, the Land Use Commission shall undertake reasonable remedial measures to prepare the site for reuse, and shall monitor the site.
- C. Commercial Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as Commercial Zone land may be used for Commercial purposes as defined in Section 3.03.2, provided that the commercial activity is consistent with the following commercial land use plan:
 - i. East side of Highway
 - 1. The Commercial Zone located on the east side of the highway is reserved for more intense commercial activity, or

- commercial activity which is not compatible with residential purposes.
2. The Commercial Zone located on the east of the highway may be used for the following activities:
 - a. Truck Stop;
 - b. Motel/Restaurant;
 - c. RV Service Shop;
 - d. Smoke Shop;
 - e. Fast Food Establishments;
 - f. Gaming Establishments; or
 - g. Convenience Store.
- ii. Commercial activity—West of Highway
 1. The Commercial Zone located on the west side of the highway is reserved for less intense commercial activity, or commercial activity which is compatible with adjacent residential purposes, in order to act as a transition or buffer area between the quiet residential district and the commercial industrial district east of the highway.
 2. Commercial activities to be conducted west of the highway may include:
 - a. Supermarket;
 - b. Bank Branch;
 - c. Variety Store;
 - d. Retail Store;
 - e. Drug Store;
 - f. Smoke Shop/Laundromat
 - g. Service Station;
 - h. Restaurant;
 - i. Fast Food Establishment;
 - j. Convenience Store;
 - k. Theater; or,
 - l. Bowling Alley.
 - iii. Tribal government use of the existing structure in the 90-Acre Commercial Zone is hereby designated as an acceptable less intensive use consistent with Section 3.03.4.
- D. Low Density Residential Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as Low Density Residential Zone land may be used for low density residential purposes as defined in Section 3.03.2.
- i. The Low Density Residential Zone of the 90-Acre parcel is set aside to maintain the quiet and privacy of the existing housing and proposed subdivision expansion.
 - ii. The Land Use Commission shall place reasonable limits on development of through streets in this area in order to protect privacy and continue to fill in with single family residences as the need arises.
- E. Medium Density Residential Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as Medium

Density Residential Zone land may be used for medium density residential purposes as defined in Section 3.03.2.

- i. The dwelling units in the 90-Acre Parcel Medium Density Residential Zone may only be used as single family dwelling units.
- ii. The purpose of the Medium Density Residential Use Zone of the 90-Acre parcel is to promote and preserve residential development of an urban density.
- iii. Except for Small Lots, the principal land use is for this zone is detached single family homes situated on lots having a minimum area of 10,000 square feet.
- iv. The lots in this parcel designated as Small Lots may range from 3,800 to 5,500 square feet, and are for the purpose of placing single family dwelling trailers.

F. Institution / Public Facility Use: Land within the 90-Acre parcel specifically designated on the applicable Official Zoning Map as Institution/Public Facility Zone land may be used for Institution or Public Facility purposes as defined in Section 3.03.2.

- i. Tribal government buildings may be located in the Institution / Public Facility Zone of the 90-Acre parcel, and may only be used in accordance with rules for facility use established by the Ely Shoshone Tribe, including:
 - 1. Tribal Education Department;
 - 2. Tribal Elders Center;
 - 3. Tribal Health Department;
 - 4. Tribal Housing Office; or,
 - 5. Tribal Police Department.
- ii. Any uses of the Tribal government buildings which become inconsistent with adjacent residential development shall be screened or fenced in order to maintain a use compatible with quiet residential living.
- iii. This Zone of the 90-Acre parcel is composed of administrative and service business offices which must be characterized by low volumes of direct, daily personal contact.

G. Open Space Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as Open Space Zone land may be used for Open Space purposes as defined in Section 3.03.2.

- i. The open space area of the 90-Acre parcel shall serve as both a drainage easement and buffer between the quiet Residential Zone and more active Commercial Zone.
- ii. The open space area should be left in its present natural condition and may be planted with drought resistant trees to beautify the area and reduce noise.

H. Recreation Use: Land within the 90-Acre Parcel specifically designated on the applicable Official Zoning Map as a Recreation Zone may be used for Recreation purposes as defined in Section 3.03.2.

- i. No person may use land within a Recreation Zone unless the person strictly abides by all rules established by the Ely Shoshone Tribe for the use of such areas.

- I. Renewable Energy Use: Land within the 90 Acre parcel designated on the applicable Official Zoning Map as Medium Density Residential Use, Low Density Residential Use, Institution/Public Facility Use and Commercial Use may be used for renewable energy purposes, but the Renewable Energy Use must be permitted by the Land Use Commission.

3.08.4 90-ACRE PARCEL—IMPERMISSIBLE USES

All uses not specifically permitted by Section 3.08.3 are impermissible.

CHAPTER 9: PARCEL #1 ZONING AND LAND USE

3.09.1 PARCEL # 1—DESCRIPTION

Parcel # 1 consists of approximately five hundred and forty three 543 acres south of Ely conveyed to the United States in trust for the benefit of the Ely Shoshone Tribes pursuant to the White Pine County Conservation, Recreation, and Development Act of 2006, Subtitle F, located in portions of Sections 25, 26, 27, 34, 35 and 36, T. 16 N., R. 63 E., M.D.B. & M.

3.09.2 PARCEL # 1—ZONING DESIGNATION

- A. Land in Parcel # 1 is limited to the uses designated in Section 3.09.2 B for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. Parcel # 1 includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Agricultural;
 - ii. Commercial;
 - iii. High Density Residential;
 - iv. Historic;
 - v. Industrial;
 - vi. Institution/Public Facilities;
 - vii. Low Density Residential;
 - viii. Medium Density Residential;
 - ix. Open Space;
 - x. Recreation; and
 - xi. Renewable Energy use.

3.09.3 PARCEL # 1 —PERMISSIBLE USES

- A. Agricultural Use/Hobby Farm: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as Agricultural Zone may be used for purposes consistent with agricultural land as defined by Section 3.03.02, and will include areas for us as hobby farms.
- B. Commercial Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as Commercial Zone land may be used for Commercial purposes as defined in Section 3.03.2, provided that the commercial activity is consistent with the following commercial land use plan:
 - i. Green house;
 - ii. RV Park;
 - iii. Cultural center;
 - iv. Supermarket;
 - v. Bank Branch;
 - vi. Variety Store;

- vii. Retail Store;
 - viii. Drug Store;
 - ix. Smoke Shop/Laundromat
 - x. Service Station;
 - xi. Restaurant;
 - xii. Fast Food Establishment;
 - xiii. Convenience Store;
 - xiv. Theater; or,
 - xv. Bowling Alley.
- C. High Density Residential Use: Land within Parcel # 1 specifically designated on the applicable Official Zoning Map as High Density Residential Zone land may be used for high density residential purposes as defined in Section 3.03.2, provided that the residential use is consistent with the following residential land use plan:
- i. Assisted Living Center; and,
 - ii. Multi-Family Units.
- D. Historic Use: Land within Parcel # 1 specifically designated on the applicable Official Zoning Map as a Historic Zone may be used for Historic purposes as defined in Section 3.03.2.
- E. Industrial Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as an Industrial Use Zone may be used for Industrial purposes as defined in Section 3.03.02, provided that the industrial activity is consistent with the following industrial land use plan:
- i. Waste Water Treatment Facility
- F. Institution/Public Facility Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as Institution/Public Facility Zone land may be used for Institution or Public Facility purposes as defined in Section 3.03.2, provided that the activity is consistent with the following Institution/Public Facility land use plan:
- i. Recreation Center;
 - ii. Parks; and,
 - iii. BMX Track.
- G. Low Density Residential Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as Low Density Residential Zone land may be used for low density residential purposes as defined in Section 3.03.2.
- H. Medium Residential Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as Medium Density Residential Zone land may be used for medium density residential purposes as defined in Section 3.03.2.
- i. The dwelling units in Parcel #1 Medium Density Residential Zone may only be used as single family dwelling units.
 - ii. The purpose of the Medium Density Residential Use Zone of Parcel #1 is to promote and preserve residential development of an urban density.
 - iii. The principal land use is detached single family homes situated on lots having a minimum area of 10,000 square feet.
- I. Open Space Use: Land within Parcel #1 specifically designated on the

applicable Official Zoning Map as Open Space Zone land may be used for Open Space purposes as defined in Section 3.03.2.

- J. Recreation Use: Land within Parcel #1 specifically designated on the applicable Official Zoning Map as a Recreation Zone may be used for Recreation purposes as defined in Section 3.03.2.
 - i. No person may use land within a Recreation Zone unless the person strictly abides by all rules established by the Ely Shoshone Tribe for the use of such areas.
- K. Renewable Energy Use: Land within the Parcel #3 designated on the applicable Official Zoning Map as Low Density Residential Use, Medium Density Residential Use, High Density Residential Use, Institution/Public Facility Use and Commercial Use may be used for renewable energy purposes, but the Renewable Energy Use must be permitted by the Land Use Commission.

3.09.4 IMPERMISSIBLE USES

- A. All uses not specifically permitted by Section 3.09.3 are impermissible.
- B. Prohibited uses of Parcel # 1 lands include:
 - i. gaming, except traditional hand games and other similar traditional games in connection with cultural activities may be conducted provided that a permit is first obtained from the Land Use Commission.

CHAPTER 10: PARCEL #2 ZONING AND LAND USE

3.10.1 PARCEL # 2—DESCRIPTION

Parcel # 2 consists of approximately 296 acres of Ely Reservation land conveyed to the United States in trust for the benefit of the Ely Shoshone Tribes pursuant to the White Pine County Conservation, Recreation, and Development Act of 2006, Subtitle F, located in portions of 13, T.15 N., R. 63 E., and a portion of Section 18, T. 15 N., R. 64 E., M.D.B. & M. (These Sections are located within two different Ranges).

3.10.2 PARCEL # 2—ZONING DESIGNATION

- A. Land in Parcel # 2 is limited to the uses designated in Section 3.10.2 B for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. Parcel # 2 includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Recreation; and
 - ii. Open Space.

3.10.3 PARCEL # 2 —PERMISSIBLE USES

- A. Open Space Use: Land within Parcel #2 specifically designated on the applicable Official Zoning Map as Open Space Zone land may be used for Open Space purposes as defined in Section 3.03.2.
- B. Recreation Use: Land within Parcel #2 specifically designated on the applicable Official Zoning Map as a Recreation Zone may be used for Recreation purposes as defined in Section 3.03.2 including the following:
 - i. All Season Lodge;
 - ii. Cabins;
 - iii. Yurt;
 - iv. Picnic Areas
 - v. Wildlife Viewing Areas; and,
 - vi. Tribal Gathering Area.

3.10.4 IMPERMISSIBLE USES

- A. All uses not specifically permitted by Section 3.10.3 are impermissible.
- B. Prohibited uses of Parcel # 2 lands include:
 - i. Gaming; and,
 - ii. Residential.

CHAPTER 11: PARCEL #4 ZONING AND LAND USE

3.11.1 PARCEL # 4—DESCRIPTION

Parcel # 4 consists of approximately 657 acres of Ely Reservation land conveyed to the United States in trust for the benefit of the Ely Shoshone Tribes pursuant to the White Pine County Conservation, Recreation, and Development Act of 2006, Subtitle F, located in portions of Sections 22, 27, & 28, T. 20 N., R. 64 E.

3.11.2 PARCEL # 4—ZONING DESIGNATION

- A. Land in Parcel # 4 is limited to the uses designated in Section 3.11.2 B for the benefit of the Ely Shoshone Tribe and its members, as set forth herein.
- B. Parcel # 4 includes the following Land Use Zones, as set forth in the applicable Official Zoning Map:
 - i. Agricultural;
 - ii. Commercial; and
 - iii. Industrial.

3.11.3 PARCEL # 4 —PERMISSIBLE USES

- A. Agricultural Use/Hobby Farm Use: Land within Parcel #4 specifically designated on the applicable Official Zoning Map as Agricultural Zone may be used for purposes consistent with agricultural land as defined by Section 3.03.02 including the following:
 - i. Agricultural Leasing with Pivots; and
 - ii. Wild Horse Refuge.
- B. Commercial Use: Land within Parcel #4 specifically designated on the applicable Official Zoning Map as Commercial Zone land may be used for Commercial purposes as defined in Section 3.03.2, provided that the commercial activity is consistent with the following commercial land use plan:
 - i. Billboards along the highway frontage; and
 - ii. Truck Stop
- C. Industrial Use: Land within Parcel #4 specifically designated on the applicable Official Zoning Map as an Industrial Use Zone may be used for Industrial purposes as defined in Section 3.03.02, provided that the industrial activity is consistent with the following industrial land use plan:
 - i. Solar Collection Site;
 - ii. Solar Manufacturing;
 - iii. Railroad Spur to Distribution Site; and
 - iv. Auction Yard.

3.11.4 IMPERMISSIBLE USES

- A. All uses not specifically permitted by Section 3.11.3 are impermissible.
- B. Prohibited uses of Parcel # 4 lands include:
 - i. Gaming.

CHAPTER 12: ADMINISTRATION

3.12.1 LAND USE COMMISSION

- A. Establishment. There is hereby established and recognized a Land Use Commission.
- B. Delegation of Authority. By this Ordinance and pursuant to Article VI (1) (e), (i)–(m) of the Constitution of the Ely Shoshone Tribe, the Ely Shoshone Tribal Council delegates to the Land Use Commission the authority necessary to carry out the purposes of this Ordinance, but reserves the right to review any action taken by virtue of such delegated power.
- C. Scope of Authority. The Land Use Commission is charged with the administration and enforcement of this Ordinance, and hereby empowered to carry out administration and enforcement responsibilities as defined in this Ordinance and the Regulations implementing this Ordinance.
- D. Commission Administration. The Ely Shoshone Tribal Council may provide the Land Use Commission with a sufficient budget for the Commissioners and staff positions to carry out their duties under this Ordinance. Fines and Fees assessed and collected by the Land Use Commission shall be used to fund the operation of the Commission.
- E. Membership. The Land Use Commission shall consist of five (5) members appointed by the Ely Shoshone Tribal Council.
- F. Qualifications of Commission Members. Each member of the Land Use Commission must:
 - i. Be at least twenty-five (25) years of age;
 - ii. Be an enrolled member of the Ely Shoshone Tribe;
 - iii. Be a resident of the Ely Shoshone Reservation for one year before the date of appointment;
 - iv. Have received a high school diploma or a GED;
 - v. Be willing to maintain loyalty to the Ely Shoshone Tribe, uphold the oath of office, and must be of good moral character; and,
 - vi. Not be convicted of a felony or misdemeanor involving dishonesty in any court.
- G. Appointments. The Ely Shoshone Tribal Council shall appoint Land Use Commission members by Resolution. Before an appointment is made, the Tribal Council shall publish notice of the open seat on the Land Use Commission for at least two weeks, and then accept letters of interest from Tribal members desiring to serve on the Land Use Commission. After fair consideration of all interested persons, the Council shall select the person to be appointed by vote.
- H. Terms. The Ely Shoshone Tribal Council shall appoint members of the Land Use Commission by Resolution for two (2) year, staggered terms. The Resolution of the Tribal Council appointing members of the Land Use Commission shall identify the term dates, and shall provide for staggered terms.
- I. Removal of Commission Members. Land Use Commission members may

be removed by Resolution of the Tribal Council for good cause. Commission members may also be removed by unanimous vote of four other Commission members for good cause.

- J. Notice and Public Hearing. No member of the Land Use Commission may be removed by the Tribal Council or Land Use Commission without first receiving reasonable notice of the proposed removal and the grounds therefor, and having a public hearing before the body proposing removal.
- K. Duties and Responsibilities.
 - i. The Land Use Commission of the Ely Shoshone Tribe is authorized to designate a site as a Brownfield site, and shall take measures to return the site to productive use quickly.
 - ii. The Commission is responsible to periodically inform the Tribal Council of its administrative and enforcement stewardship activities.
- L. Compliance. The Commission shall enforce all provisions of the Land Use Ordinance and regulations implementing this Ordinance. The Commission is empowered to initiate enforcement actions to address any non-conforming uses.
- M. Training. Land Use Commissioners shall receive ten (10) hours of training in planning and land use law and policy each year.
- N. Policy Recommendations. The Land Use Commission shall be responsible to provide recommendations to the Tribal Council regarding land use matters on the Reservation, including NEPA analyses.
- O. Regulations. The Land Use Commission shall promulgate, subject to the approval of the Ely Shoshone Tribal Council by Ordinance, regulations implementing this Ordinance to govern all land and natural resource use permits and processes. The regulations implementing this Ordinance shall have the same force and effect as other Tribal Ordinances.
- P. Comprehensive Land Use Plan/Seven Generation Plan. The Commission shall assist in the development of a Comprehensive Land Use Plan for the Ely Shoshone Tribes, which shall be consistent with the purposes of this Ordinance. The Commission shall review any proposed Comprehensive Land Use Plan and provide a written recommendation to the Ely Shoshone Tribal Council regarding adoption of the Comprehensive Land Use Plan and incorporation thereof as part of the Land Use Policy Ordinance. No comprehensive plan related to land use or natural resource management may be proposed to or considered by the Ely Shoshone Tribal Council without first obtaining the recommendation of the Commission.
- Q. Bylaws. The Land Use Commission shall develop and implement bylaws governing the effective internal operation of the Commission.
- R. Other duties. The Commission Members shall fulfill all duties and responsibilities set forth in the Commission's Bylaws, and any other duties specifically imposed on the Land Use Policy Commission by Resolution of the Tribal Council.

CHAPTER 13: NON-CONFORMING USE

3.13.1 NO CONTRARY USE

No Person within the Reservation shall use or allow the use of said land or natural resource contrary to the provisions of this Ordinance. Use of property includes, but is not limited to any utilization, employment, occupation, or application of land or natural resources, and construction or deconstruction of any structure, building, pipeline, or improvement of any kind, above or below grade.

3.13.2 NON-CONFORMING USE

Uses of land or natural resources that do not conform to the Findings, Policy, or Purpose of the Land Use Ordinance, regulations implementing this Ordinance, or any of the provisions found therein or herein, constitute a 'non-conforming use,' are not allowed, and shall not be permitted. Non-conforming uses of land or natural resources, regardless of how long they may have been in existence, violate Tribal law and shall not be permitted or allowed to continue. A use of land or natural resources subject to this Ordinance which is different from the description of the proposed activity in the Application, or a use that exceeds the scope of the use permitted constitutes a non-conforming use.

CHAPTER 14: PENALTIES

3.14.1 RESPONSIBLE PERSON

Every person, whether as principal, agent, employee, or otherwise, who shall be responsible to any degree for a non-conforming use, or who is responsible to any degree for constructing any building or structure or using land or natural resources contrary to the provisions of this Ordinance or the regulations implementing this Ordinance, or who shall commence to construct, any building or any structure for which a permit is required or to use land or natural resources in such a way as to require the obtaining of a permit, without first obtaining a permit from the Land Use Commission, and any Person, whether as principal, agent or employee, or otherwise, who shall use any building, structure, dwelling, or use any land or natural resource, contrary to the provisions of this Ordinance shall be subject to a civil penalty.

3.14.2 PENALTY AMOUNT

The civil penalty for each violation of the Land Use Ordinance or the regulations implementing this Ordinance shall be a sum not to exceed one hundred and no/100 (\$100.00) dollars.

3.14.3 DETERMINATION OF PENALTY

The Land Use Commission shall determine the amount of the civil penalty. Each day during which any non-conforming use or violation exists or continues shall be deemed to be a separate offense.

CHAPTER 15: DECISIONS AND APPEALS

3.15.1

DECISIONS

The Land Use Commission shall decide all applications, petitions, or requests regarding uses of land or natural resources.

A. Decision Time Period.

Where a hearing on an application is not requested or not granted, no underlying permits are needed, and the application is complete, the Land Use Commission shall decide whether to grant or deny such application within thirty (30) days of completing the Initial Review Procedure. Where a hearing is granted, the application is incomplete, an underlying permit is needed, or extenuating circumstances exist, the Land Use Commission shall decide whether to grant or deny such application within a reasonable time, not to exceed one hundred and twenty (120) days. Where necessary based on exigent circumstances, the Land Use Commission may extend the decision time period by a reasonable amount of time commensurate with the circumstances.

B. Permit Decision Standards.

Decisions of the Land Use Commission shall be governed by the Findings, Policy and Purpose of this Ordinance, and any specific substantive permit or use standards. When making a decision on a permit application, the Commission shall consider whether there is substantial evidence to conclude that granting the permit is consistent with the establishment of the Reservation, the Findings, Policy, and Purpose of this Ordinance. The permit applicant has the burden to produce evidence in support of the application. All Commission decisions must be made by the majority vote of a quorum of the Land Use Commission.

C. Record of Decision.

In every case, the Land Use Commission shall issue a written Notice of Decision to the applicant and, if denied, set forth the grounds therefore in the Notice of Decision. The Commission shall issue the written decision, including findings of fact and conclusions of law, within ten (10) days of rendering its decision, unless the applicant agrees to a longer period of time or the Land Use Commission extends the time due to exigent circumstances. Failure to issue the written decision within ten (10) days, however, does not render the decision of the Commission invalid. The Land Use Commission shall maintain an administrative record for each application and include a copy of every decision of the Land Use Commission in the administrative record.

3.15.2

APPEALS

A. Standing.

Any Person Aggrieved by a final Permit Decision or Record of Decision of the Commission may appeal such decision as set forth herein. Any contiguous property owner shall be automatically deemed Aggrieved. Any Person challenging a decision of the Land Use Commission has the initial burden to prove by a preponderance of the evidence that person is aggrieved as defined in this Ordinance. The preponderance of the evidence standard used to analyze standing is deliberately selected so that it is relatively simple for an individual to get his or her case before the Tribal Court.

B. Procedure—Appeal to Tribal Courts for Enforcement Matters.

- i. Appeal – Scope & Deadline. Any person aggrieved by a decision or action of the Land Use Commission in an enforcement or compliance proceeding under this Ordinance may appeal to the Ely Shoshone Tribal Court within fifteen (15) days of the final Land Use Commission decision. This fifteen day time limit is jurisdictional.
- ii. Dual Notice of Appeal Filing. To appeal the person must simultaneously file a Notice of Appeal with the Secretary of the Land Use Commission and the Tribal Court Clerk.
- iii. Content of Notice of Appeal. The Notice of Appeal must identify the final decision of the Land Use Commission being appealed, the standing of the appellant, and the basis for the appeal under Tribal law.
- iv. Administrative Record. Upon receipt of the Notice of Appeal, the Secretary of the Land Use Commission shall cause a copy of the administrative record, including the Commission’s findings of fact and decision to be forwarded to the Tribal Court Clerk within thirty (30) days.
- v. Procedure. The action in Tribal Court shall be pursued and treated as any action instituted in said Court.
- vi. Defenses and Standard of Review. All defenses, including sovereign immunity, may be asserted by the Ely Shoshone Tribe, the Ely Shoshone Tribal Council, or the Land Use Commission. In the litigation of such action, it shall be presumed that the final action of the Land Use Commission from which the appeal is taken is legal in each and every respect. The role of the Tribal Court shall be, if sovereign immunity is not asserted, to review whether

basic due process was afforded to the person and whether there is clear and convincing evidence indicating that the Commission abused its discretion. The clear and convincing standard of evidence is deliberately selected to reflect the appropriate amount of deference due for decisions of the Commission, and the authority delegated to the Commission by the Ely Shoshone Tribal Council.

- vii. Further Appeal. Any person aggrieved by the final decision of the Tribal Court may appeal to the Tribal Court of Appeals, as provided in the Law and Order Ordinance for appeals in civil cases. The determination of the Tribal Court of Appeals shall be final.

C. Procedure—Appeal to Tribal Council for Permitting or Zoning Matters.

- i. Appeal – Scope & Deadline. Any person aggrieved by a decision or action of the Land Use Commission in a permitting or amendment decision under this Ordinance may appeal to the Ely Shoshone Tribal Council within fifteen (15) days of the final Land Use Commission decision. This fifteen day time limit is jurisdictional.
- ii. Dual Notice of Appeal Filing. To appeal the person must simultaneously file a Notice of Appeal with the Secretary of the Land Use Commission and the Clerk of the Tribal Council.
- iii. Content of Notice of Appeal. The Notice of Appeal must identify the final decision of the Land Use Commission being appealed, the standing of the appellant, and the basis for the appeal under Tribal law.
- iv. Administrative Record. Upon receipt of the Notice of Appeal, the Secretary of the Land Use Commission shall cause a copy of the administrative record, including the Commission’s findings of fact and decision to be forwarded to the Tribal Council’s Clerk within thirty (30) days.
- vii. Procedure. The action in before the Tribal Council shall be treated as any matter normally brought before the Tribal Council, but shall include a due process hearing according to the custom and practice of the Tribal Council.
- viii. Defenses and Standard of Review. All defenses, including sovereign immunity, may be asserted by the Ely Shoshone Tribe or the Land Use Commission. It shall be presumed that the final action of the Land Use Commission from which the appeal is taken is legal in each and every respect. The role of the Tribal Council

shall be, if sovereign immunity is not asserted, to review whether basic due process was afforded to the person and whether there is clear and convincing evidence indicating that the Commission abused its discretion. The clear and convincing standard of evidence is deliberately selected to reflect the appropriate amount of deference due for decisions of the Commission, and the authority delegated to the Commission by the Ely Shoshone Tribal Council.

- ix. No Further Appeal. The decision of the Tribal Council shall be final.