

ROSEBUD SIOUX INDIAN RESERVATION

TITLE 18: LAND USE

December 31, 1991

ROSEBUD SIOUX LAW AND ORDER CODE

TITLE 18: LAND USE

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ROSEBUD SIOUX LAW AND ORDER CODE

TITLE 18: LAND USE

CHAPTER ONE LEGISLATIVE FINDINGS AND PURPOSE

§18-1-101. Sovereign Power to Regulate Land Use.

The power to regulate land use is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of Indian tribes, except where it has been limited or withdrawn by federal law. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and ByLaws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter. Pursuant to the Constitution and ByLaws, as amended, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1(c), (h), (i), (k), (m), (t) and (u) of the Tribal Constitution, which authorize the Tribal Council to manage and otherwise deal with tribal lands and property, to exclude by ordinance from the restricted lands of the Reservation persons not legally entitled to reside therein, to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice on the Reservation, to regulate the conduct of trade and the use and disposition of property upon the Reservation, to regulate tribal agencies and tribal officials, and to delegate to subordinate boards or tribal officials the forgoing powers, subject to review by the Council.

§18-1-102. Lack of Adequate Land Use Regulations.

The Rosebud Reservation, tribally-owned trust lands and allotted trust lands owned by enrolled tribal members lie within Todd, Tripp, Mellette, Gregory and Lyman Counties, South Dakota. Todd County, in which the majority of the Reservation lies, has no land use regulations of any kind. The remaining four counties are similarly without any land use regulations.

The Reservation is checkerboarded with both trust land and nontrust land and within the historical boundaries of the Rosebud Reservation are substantial populations of both Indians and non-Indians. The Reservation was established as an agricultural reservation for farming and ranching purposes to provide a permanent homeland for the Tribe. Since establishment of the Reservation by the Treaty, the Tribe has maintained the essential character of the entire Reservation; however as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate land use controls grows ever more serious. Tribal land and tribal members are the most precious assets of

the tribe. The Reservation is too valuable a tribal resource to be damaged by uncontrolled development and use of land with their attendant problems.

The Council finds that such uncontrolled use of land has a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation, resulting in:

- (1) gradual loss of the essential character of the Reservation,
- (2) destruction of the historical and cultural values and traditions of the Tribe,
- (3) deterioration of the aesthetics of the Reservation,
- (4) increased transportation problems,
- (5) increased inability of the infrastructure of the Reservation to provide governmental services for the population,
- (6) increased air, water and solid waste disposal pollution,
- (7) an adverse affect upon the Reservation school system,
- (8) increased contamination of drinking water from the Ogallala Aquifer and surface water supplies, and
- (9) deterioration of the standards of living, quality of life, welfare and well-being of all Reservation residents, whether tribal members or not.

§18-1-103. Consensual Relations Between Nonmembers, the Tribe, and Tribal Members.

The Council finds that every person who uses land, whether trust land or nontrust land, within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe and that all such uses of land have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation.

§18-1-104. Lack of County and State Land Use Regulation.

Because the five counties within which the Reservation and tribally owned and individually owned trust lands lie do not have zoning codes, it is imperative that the Tribe regulate all land use within its jurisdiction.

§18-1-105. Benefits of Tribal Government.

Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business within the Rosebud Reservation are the following:

- (1) The provision of a civilized form of government and civilized environment within which to reside and do business;
- (2) The provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;
- (3) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and
- (4) The orderly development and protection of the Reservation lands, resources and communities.

§18-1-106. Territory, Persons and Property Affected.

To the extent not prohibited by federal law, this Title shall apply to the following.

- (1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;
- (2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties; and
- (3) All persons and property within any geographical area referred to in Subsections (1) and §18-2-101(2), (40)(b) that is subject to the jurisdiction and governmental power of the Tribe.

§18-1-107. Purpose.

The Council hereby declares it to be in the public interest that all uses of land, whether trust land or nontrust land, by enrolled tribal members and nonmembers be regulated as hereinafter provided in order to:

- (1) encourage the most appropriate use of the land;

(2) protect the sacred, cultural, social and economic stability of residential, agricultural, commercial, industrial, forest, wildlife, and environmentally sensitive lands, water resources, and other areas within the Rosebud Reservation, and to assure the orderly use of such areas;

(3) prevent the menace to the public safety resulting from the improper location of buildings and land uses;

(4) facilitate the purpose and objectives of the By-laws, Tribal Land Enterprise, Rosebud Indian Reservation; and

(5) otherwise promote the public health, safety, morals, and general welfare in accordance with the treaty rights reserved by the Rosebud Sioux Tribe.

§18-1-108. **Sovereign Immunity.**

The Rosebud Sioux Tribe, and all its constituent parts, including the Land Use and Environment Commission established pursuant to this Title, are immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Land Use and Environment Commission, its members, the Director of Land Use and Environment and the Director of Natural Resources; except that the Commission, its members, and the Directors shall be subject to suit for prospective, equitable relief (including declaratory and injunctive relief) only in proceedings before the Commission and Tribal Court that arise from this Title or Title 19. Nothing in this Title, nor any appeal to the Tribal Court, nor any enforcement action taken pursuant to this Title, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect. Nothing in this Title shall be construed as a legislative declaration of tribal liability under federal or state environmental laws or as a waiver of tribal sovereign immunity with respect thereto.

CHAPTER TWO
GENERAL PROVISIONS

§18-2-101. Definitions.

In this Title and in Title 19, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

(1) "Accessory Use of Building" means a building, part of a building or structure or use which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot.

(2) "Agriculture" means the tilling of the soil, the raising of crops, horticulture; livestock farming, dairying and/or animal husbandry.

(3) "Alley" means a public thoroughfare or way which has a width of not more than 20 feet which affords only a secondary means of access to abutting property.

(4) "Apartment House" means a building or portion of a building, designed for occupancy by three or more families living independently of each other and containing three or more dwelling units.

(5) "Building" means any structure, including mobile homes, established for the support, shelter or enclosure of persons, animals or chattels, and when separated by division walls without openings from the ground up, each portion of such structure shall be deemed a separate building. For purposes of this Title, "mobile homes" does not include vehicles or trailers that are not normally occupied other than for travel.

(6) "Business" means any regular or temporary activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services. However, an isolated sale of property or services shall not be considered to be "business" under this Title, nor shall home occupations involving the creation of traditional Indian art or handicrafts by tribal members or the traditional practice of medicine by a tribal member be considered to be a "business" under this Title.

(7) "Constitution" or "Tribal Constitution" means the Constitution and ByLaws of the Rosebud Sioux Tribe of South Dakota, ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter.

(8) "Council" or "Tribal Council" means the Rosebud Sioux Tribal Council established as the governing body of the Rosebud Sioux Tribe in the Tribal Constitution.

(9) "Commission" means the Land Use and Environment Commission established under this Title.

(10) "Department" means the Land Use and Environment Department established under this Title.

(11) "Director" means the Tribal Director appointed pursuant to Chapter Five of this Title or, if with respect to matters governed by Chapter Six of Title 19 only and enforcement thereof, the Director of Water Resources.

(12) "Dwelling" means a building or portion thereof designed exclusively for residential purposes, including one family, two family, and multiple family dwellings, but shall not include hotels, auto courts, boarding houses and lodging houses.

(13) "Dwelling Unit" means one or more rooms in a dwelling or apartment house or apartment hotel designed for occupancy by one family for living or sleeping purposes, and having only one kitchen.

(14) "Dwelling, Single Family" means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

(15) "Dwelling, Two Family" means a building designed exclusively for occupancy by two families living independently of each other, and containing two dwelling units. Such definition shall also include the term "Duplex."

(16) "Dwelling, Multiple Family" means a building, or portion thereof, designed for occupancy by three or more families living independently of each other, and containing three or more dwelling units.

(17) "Farming Activities" mean all acts or human efforts for the raising of crops, horticultural endeavors, soil protection or preparation efforts, or ground enhancement activities for cultivation of fruits, vegetables, flowers, grasses, plants or other crops which occur within the exterior boundaries of the Reservation, including activities involving the use of pesticides, fertilizers, chemical enhancers or other products or natural substances utilized in the raising of crops or other vegetal species.

(18) "Forest Activities" mean all acts or human efforts for the raising or for the production enhancement of trees, plants or other forest crops, horticultural endeavors for the production of trees or other fiber producing vegetal species (excluding cotton), erosion control efforts and other activities for soil protection, preparation or conservation which occurs within the exterior boundaries of the Reservation, including activities involving the use of pesticides, fertilizers, chemical enhancers or other products or natural substances utilized in the replanting or raising of trees, forest crops or other vegetal species (other than those activities included under "Farming activities" above).

(19) "Grade" means the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of the street side of a sidewalk, the above-ground level shall be measured at the sidewalk.

(20) "Home Occupation" means any occupation of a service character which is clearly secondary to the main use of the premises as a dwelling place, and does not change the character thereof or have any exterior evidence of such secondary use. Any such occupation shall be carried on or conducted only by members of a family residing in the dwelling and in connection with which there is kept no stock in trade or commodity for sale upon the premises; provided, however, that the keeping of stock in trade or commodities for sale may be done by any enrolled tribal member engaged in the manufacture, sale and repair of Indian arts and crafts.

(21) "Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.

(22) "Institution" means an establishment maintained and operated by a society, corporation, individual, foundation or public agency for the purpose of providing charitable, social, educational, or similar services to the public, groups, or individuals.

(23) "Lot" means a fractional part of subdivided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include "Tracts" or "Parcels".

(24) "Lot Area" or "Parcel Area" means the total horizontal area within the boundary lines of a lot or a parcel. For the purposes of determining area in the case of an irregular triangular or cone-shaped lot or parcel, a line 10 feet in length within the lot or parcel and farthest removed from the front lot line and at right angles to the line constituting the depth of such lot or parcel shall be used as the rear lot line.

(25) "Lot, Corner" means a lot situated at the intersection of two or more streets, except where the angle of the intersection of the street margins exceeds 135°.

(26) "Lot, Inside or Interior" means a lot other than a corner lot or reversed corner lot.

(27) "Lot Key" means the first lot to the rear of a reversed corner lot and whether or not separated by an alley.

(28) "Lot Line, Front" means in the case of interior lot, the property line separating the lot from the street. In the case of a corner lot, the front line shall be the property line separating the narrowest street frontage of the lot from the street.

(29) "Lot Line, Rear" means the property line which is opposite and most distant from the front lot line. For the purpose of establishing the rear lot line of a triangular or trapezoidal lot, or of a lot the rear line of which is formed by two or more lines; the following shall apply:

(a) For a triangular or cone-shaped lot a line 10 feet in length within the lot and farthest removed from the front line at right angles to the line comprising the depth of such lot shall be used at the rear lot line.

(b) In the case of a trapezoidal lot, the rear line of which is not parallel to the front lot line, the rear lot line shall be deemed to be a line at right angles to the line comprising the depth of such lot and drawn through a point bisecting the recorded rear lot line.

(c) In the case of a pentagonal lot, the rear boundary of which includes an angle shall be employed for determining the rear lot line in the same manner as prescribed for a triangular lot.

(30) "Lot Line, Side" means any lot boundary line not a front line lot or a rear lot line.

(31) "Lot of Record" means a lot shown on an officially recorded plot or subdivision, or a parcel of land the deed of which is officially recorded, considered as a unit of property, and described by metes and bounds.

(32) "Lot, Reversed Corner" means a corner lot, the side street line of which is substantially a continuation of the front lot line of the lot upon which the rear of such corner lot abuts.

(33) "Lot Through" means an interior lot having frontage on two streets.

(34) "Lot Width" means the horizontal distance between the side lot lines measured at right angles to the line comprising the depth of the lot at a point midway between the front and rear lot line. However, the length of the line constituting the rear line of the required front yard shall never be less than 50 feet.

(35) "Notice", as used in this Section, means publication in any newspaper of general circulation on the Reservation.

(36) "Percentage of Lot Occupancy" means the percentage of a lot of parcel as herein defined, which is occupied as building area.

(37) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, investment trust, municipal corporation, corporation, association, syndicate, pool,

organization, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(38) "Preside" means to occupy the place of authority of, direct, control, or regulate proceedings of, exercise superintendence or guidance of, an organization, meeting or activity.

(39) "Property" means realty and personalty, of whatever nature, including fixtures, money, claims, intangible rights and interests in property.

(40) "Reservation" means:

(a) The Rosebud Sioux Reservation, including all lands, islands, waters, roads, and bridges or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Section Two of the Act of March 2, 1889, 25 Stat. 888, and such other lands, islands, waters or any interest therein thereafter added to the Reservation at any time;

(b) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties;

(c) All persons and property within any geographical area referred to in Subsections (40)(a) and (2), (40)(b) above, that is subject to the jurisdiction and governmental power of the Tribe.

(41) "Right Of Way, Private" means every way, lane, road, street, and every way or place on the Reservation in private ownership and used for travel by the owner or owners or those persons having express or implied permission from the owner or owners, but not by other persons.

(42) "Right Of Way, Public" means every way, lane, road, street and every way or place on the Reservation open as a matter of right to public vehicular travel.

(43) "Sign" means any outdoor advertising display or outdoor advertising structure designed and placed so as to be readable principally from the outside.

(44) "State" means the State of South Dakota.

(45) "Structural Alterations" means any change in the support in members of a building such as foundations, bearing walls, columns, beams, floor or roof joists, girders, or rafters, or changes in the roof or exterior lines if such changes result in any enlargement of the building.

(46) "Structure" means anything constructed located, or established that requires location on the ground or attached to something having a location on the ground but not including fences or walls used as fences less than six feet in height.

(47) "Tribal Appellate Court" means the court of that name established under the provisions of Chapter One of Title 9 of this Code, and the Judges of that Court, collectively and individually, serving and acting in that office and capacity.

(48) "Tribal Court" means the court of that name established under the provisions of Chapter One of Title 9 of this Code, and the Judges of that Court, collectively and individually, serving and acting in that office and capacity.

(49) "Tribal Land Enterprise" means the Tribal Land Enterprise established by the Tribe pursuant to the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation adopted by the Tribal Council April 5-7, 1943, approved by the Secretary of the Interior July 8, 1955, as amended.

(50) "Tribal member" or "member" means an individual Indian who is enrolled in the Rosebud Sioux Tribe.

(51) "Waterway" means any creek, stream, river or lake within the boundaries of the Reservation, including man-made canals, ditches, or lakes.

(52) "Yard" means an open space other than a court, on the same lot with a the building and unoccupied from the ground upward.

(53) "Yard, Front" means the required yard extending along the entire length of the front line of the lot which is the street line, and measured from the building to the street.

(54) "Yard, Rear" means the required yard extending along the entire width of the lot at the rear of a building, measured from the building in the direction opposite from the front yard.

(55) "Yard, Side" means the required yard between the side wall of a building and the side line of the lot, measured from the building to the side line.

(56) "Zone" means a geographical area given a specific land use designation pursuant to Chapter Eight through Seventeen of this Title.

**CHAPTER THREE
MINIMUM REQUIREMENTS**

§18-3-101. Code as Minimum Requirements.

In their interpretation and application, the provisions of this Title shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standard, shall govern.

CHAPTER FOUR
LAND USE AND ENVIRONMENT COMMISSION

§18-4-101. Creation of Commission.

The Tribe hereby creates and establishes, pursuant to this Title, the Land Use and Environment Commission, a governmental agency and subordinate subdivision of the Tribe.

§18-4-102. Number and Selection of Commissioners.

The Commission shall comprise five members appointed by the Council.

§18-4-103. Qualifications of Commissioners.

(1) Three Commission members shall be enrolled members of the Rosebud Sioux Tribe, and two Commission members shall be non-members of the Rosebud Sioux Tribe.

(2) In appointing members, the Council shall give due consideration to:

(a) sound judgment and knowledge of the goals, purposes, and provisions of Titles 18 and 19;

(b) qualities of experience, industry, responsibility, integrity, and sensitivity to the unique Indian cultural, economic, and social condition and goals of the Rosebud Sioux Tribe; and

(c) familiarity with the land and natural resources of the Rosebud Sioux Indian Reservation within the territory described in §18-1-106 of the Title.

(3) No member of the Commission shall serve in any other tribal capacity in which he is responsible for actions or decisions that involve the use of land within the Rosebud Sioux Indian Reservation which would regularly be subject to the provisions of Titles 18 and 19.

§18-4-104. Terms of Office.

(1) Commissioners shall serve three year terms and shall hold office until their successors have been appointed and have been sworn into office; provided however, that the first Commission shall have terms of office as described in §18-4-106.

(2) The members of the Commission shall not be subject to the Tribal Personnel and Policy Procedure Manual.

§18-4-105. Oath of Office.

At the time of being sworn into office each Commissioner shall take the following oath of office: I, _____, do hereby solemnly swear that I will support and defend the Constitution of the United States against all enemies, will carry out faithfully, and impartially, the duties of my office to the best of my ability; and will cooperate, promote and protect the best interests of the Tribe in accordance with the Tribal Constitution and By-Laws.

§18-4-106. First Commission.

Two Commissioners appointed to the first Commission shall serve terms of three years. Two Commissioners appointed to the first Commission shall serve terms of two years. The remaining Commissioner appointed to the first Commission shall serve a term of one year.

§18-4-107. Vacancies.

If any Commissioner shall die, resign, be removed or, for any reason, be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill the position. Terms of office of all persons appointed to replace the initial Commissioners shall be for the balance of any unexpired term for each such position.

§18-4-108. Resignation.

Any Commissioner may resign by delivering a written resignation to the President of the Commission. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Commissioner's resignation under this Section or removal under §18-4-109 shall also terminate that Commissioner's status, if applicable, as a presiding officer of the Commission.

§18-4-109. Removal.

A Commissioner may be removed by the Council for serious inefficiency or neglect of duty or for malfeasance, misfeasance or nonfeasance or for misconduct in office, but, except as provided below in this Section, only after a hearing before the Council, and only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his or her behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Commissioner may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings, together with the charges and findings thereon, shall be kept by the Tribal Secretary. A decision on removal by the Council shall be final.

§18-4-110. Officers of the Commission.

(1) **President.** The President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of two years. The President shall preside over all Commission meetings; sign on behalf of the Commission all documents, decisions, orders, notices, or other papers approved for such execution by the Commission; and shall have such other powers and duties as may from time to time be assigned to him by the Commission.

(2) **Vice President.** The Vice President of the Commission shall be appointed by the Council from among the members of the Commission and shall hold office for a term of one year. Whenever the President is unable to preside or fulfill his duties as President, the Vice President shall do so, and when so acting, shall be clothed with all of the powers and duties of the President.

(3) **Secretary.** The Secretary of the Commission shall be elected by and from the Commission membership for a term not to exceed his term of office as Commissioner. His duties shall be those assigned him by the Commission.

(4) **Treasurer.** The Treasurer of the Commission shall be the tribal treasurer and shall perform all functions as such for the Commission pursuant to his constitutional authority.

§18-4-110. Offices of the Commission.

The Commission shall be provided with suitable office space, necessary office furniture, stationery, books and maps, the expense thereof to be paid by the Tribe pursuant to appropriations for such purposes.

§18-4-111. Compensation of Commissioners.

Compensation of Commissioners, if any, shall be determined by the Council and shall be paid from the Commission Account established pursuant to §18-4-115. Otherwise Commissioners shall serve without pay, but shall be reimbursed for out-of-pocket expenses incurred performing their official duties at a rate established by the Council.

§18-4-112. Quorum.

Four Commissioners shall constitute a quorum of the Commission. A majority of those Commissioners present at a meeting at which there is no quorum may by resolution adjourn the meeting from time to time for a period not exceeding ten days in any one instance.

§18-4-113. Majority Vote.

All members of the Commission, including the President, or the Vice President if he shall be presiding, shall be entitled to vote upon all matters coming before the Commission and all such matters shall be decided by majority vote.

§18-4-114. General Procedures of the Commission.

The Commission shall in all cases conduct its proceedings in the manner most conducive to the proper dispatch of business and to the ends of justice. No Commissioner shall participate in any hearing or proceeding in which such Commissioner has any direct personal pecuniary interest. The Commission may make or amend such general rules or orders as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use by the Tribal Court. Any party may appear before the Commission and may be heard in person or by attorney. Every vote and official action of the Commission shall be entered into a record and its proceedings shall be published upon the request of any interested person. Every Commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the Commission.

§18-4-115. Commission Account Established.

(1) There is hereby authorized and directed to be established an account in a federally-insured financial institution to be known as the Land Use and Environment Commission Account.

(2) The Commission Account shall be an interest-bearing account and the funds therein may be invested and reinvested as approved by the Council.

(3) No monies shall be released or expended from the Commission Account except upon written resolution of the Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Such appropriated amount shall be directly transferred to the account of the receiving department, agency, or program named in the appropriation resolution.

(4) All fees, penalties, interest, charges, or other monies collected by the Commission in the administration and enforcement of Titles 18 and 19 shall be deposited in the Commission Account.

§18-4-116. Jurisdiction and Powers of Commission.

Subject to the right of review provided in Article IV, Section 1(u) of the Tribal Constitution, the Commission shall have the following powers:

(1) to exercise all managerial authority over the Tribal Land Use and Environment Department pursuant to Titles 18 and 19;

(2) to determine petitions for zone changes and approve zone changes pursuant to procedures set forth in this Title;

(3) to set such fees and charges for applications, permits, certified copies of proceedings, files, and other records as it deems appropriate;

(4) to employ and consult with such advisors regarding its duties as it may deem necessary, subject to the limitations hereunder and restrictions set forth in §18-4-120;

(5) to retain and use the services of only the tribal attorneys or other attorneys designated by the Council upon a contract approved by the Council and the Secretary of the Interior;

(6) to employ and use the services of only the tribal accountants or other accountants designated by the Council upon a contract approved by the Council;

(7) to publish and make available to the public standardized forms necessary for implementation of this Title;

(8) to administer oaths, conduct hearings as provided in §18-4-117 and §18-4-118 hereunder, and, by subpoena or subpoena duces tecum, to compel the attendance and testimony of witnesses and the production of any books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer or any other person relating to any enforcement action authorized by Titles 18 and 19;

(9) to examine under oath, either orally or in writing, any petitioner or witness with respect to any enforcement action authorized by Titles 18 and 19;

(10) to delegate to an individual member of the Commission, the Director, the Director of Water Resources with respect to matters governed by Chapter Six of Title 19 only and enforcement thereof, or to other members of the Commission staff, or, subject to the approval of the Council, to tribal staff, such of its functions as may be necessary to administer Titles 18 and 19 efficiently; provided, that the Commission may not delegate its powers to promulgate regulations;

(11) to promulgate and enforce regulations consistent with Titles 18 and 19 pursuant to §18-4-120 and §19-5-108.

(12) to require the filing of any forms or reports and the issuance of any regulations necessary for implementation of Titles 18 and 19;

(13) to adopt, by regulations, a schedule of fees and charges for services rendered relating to preparation of transcripts and the furnishing of certified copies of: proceedings, files, and records;

(14) to make recommendations to the Council regarding the amendment of Titles 18 and 19; and

(15) to exercise all other authority delegated to it by this Code or the Council, or as may be reasonably necessary in the implementation of any provisions of Titles 18 and 19.

§18-4-117. Hearings; Examiner.

The Commission may conduct such hearings as may be reasonably required in administration of the powers and duties conferred upon it by Titles 18 and 19. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under §18-4-118. Reasonable notice of all hearings shall be given to interested persons as determined by the Commission.

§18-4-118. Appointment of Examiner; Power of Examiner.

The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under Titles 18 and 19 with respect to any such hearing.

§18-4-119. Regulations of the Commission.

(1) The Commission shall promulgate such written regulations as are necessary to carry out the orderly performance of all its duties and powers, including, but not limited to, regulations relating to: the internal operational procedures of the Commission and its staff, the interpretation and application of Titles 18 and 19 as may be necessary to carry out its duties and exercise its powers, the promulgation of official findings or reports or other information required by or necessary to implement Titles 18 and 19, the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by Titles 18 and 19.

(2) Such regulations shall provide for hearings for all interested persons upon reasonable notice, and their right to present oral or written testimony.

(3) No rule or regulation of the Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed for record in the office of the Tribal Secretary and in the office of the Clerk of Tribal Court or Tribal Appellate Court. The copy

shall bear the signature of at least three Commission members, certifying that the rule or regulation was duly adopted by the Commission pursuant to Titles 18 and 19.

(4) The Tribal Court, Tribal Appellate Court and any other court of competent jurisdiction shall take judicial notice of all regulations of the Commission promulgated pursuant to Titles 18 and 19.

§18-4-120. Commission Employees and Expenses.

(1) The Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties, subject to the limitations and restrictions set out in this Section. Commission employees shall be subject to the Tribal Personnel and Policy Procedures.

(2) Upon the approval of the Council by resolution, the Commission may utilize regular tribal staff in exercising the duties and responsibilities set out in Titles 18 and 19.

(3) The Commission may delegate to the tribal staff by rule such of its functions as may be necessary to administer Titles 18 and 19 efficiently, subject to the limitations of this Section.

(4) The total amount disbursed by the Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated for these same disbursements by the Council. The Commission shall submit to the Council a line item proposed budget for the next fiscal year not later than August 15th of each year.

§18-4-121. Bonds.

(1) The Commission may require its members and each of its officials and employees who may handle tribal monies or revenues, or who are responsible therefor, to give a bond for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

(2) The premiums on any bonds required of the Commission's members, officials, and its employees shall be paid from the Commission Account as authorized in the Commission budget.

§18-4-122. Records of the Commission.

(1) The Commission shall keep and maintain accurate, complete, and detailed records which reflect each and every official transaction, communication, or action of the Commission, including minutes of all meetings of the Commission.

(2) Such records shall be maintained at the offices of the Commission and shall not be removed from that location absent the consent of the Commission by formal resolution.

(3) Such records shall be subject to audit any time upon the direction of the Council, and shall be audited not less than once each year by an independent auditor selected by the Council.

(4) Records of the Commission which shall be public records of the Tribe and which shall be available for public inspection during regular business hours shall include the following:

(a) Documents and materials submitted to the Commission with respect to any official Commission business; and

(b) Records of all administrative proceedings or hearings before the Commission or any hearing examiner; and

(c) Minutes of all Commission meetings.

(5) Records of the Commission which shall not be public records of the Tribe and which shall not be available for public inspection shall include the following:

(a) Personnel matters and personnel files; and

(b) Advice of counsel and matters relating to threatened, past or pending litigation.

Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission.

§18-4-123. Powers of Commission to Issue and Enforce Orders and Permits.

In addition to other powers conferred upon it by this Title and Title 19, the Land Use and Environment Commission shall have power to hold hearings relating to any aspect of the administration of this Title.

§18-4-124. Power of Commission to Issue and Enforce Orders and Permits.

In addition to other powers conferred upon it by This Title and Title 19, the Land Use and Environment Commission shall have power to issue such permits and orders as may be necessary to effectuate the purposes of this Title and enforce the same by all appropriate administrative and judicial proceedings.

§18-4-125. Commission is State Agency for Purposes of Federal Law.

The Land Use and Environment Commission shall be designated as a state agency for all state purposes of the Clean Water Act, codified at 33 U.S.C. §§ 1251-1387; the Solid

Waste Disposal Act, codified at 42 U.S.C. §§ 6901-6992k; and the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, as amended to January 1, 1992.

§18-4-126. Hearings of the Commission; Examiner.

The Commission may conduct such hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Title 18 and 19. The Commission may designate one of its members to act as examiner for the purpose of holding any hearing which the Commission has the power or authority to hold, or the Commission may appoint another person to act as examiner under § 18-4-127. Reasonable notice of all hearings shall be given to interested persons as determined by the Commission.

§18-4-127. Appointment of Examiner; Power of Examiner.

The Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Title and Title 19 with respect to any such hearing.

§18-4-128. Effective Date of Orders and Decisions.

Every decision made by the Commission constituting an order or decision shall be effective and enforced 10 days after it has been filed and has been served by personal delivery or by mailing a copy thereof to all parties to the proceeding in which the decision was made or to their attorneys, unless the Commission specifies a different date upon which the order or decision shall be effective.

§18-4-129. Conclusive Effect of Orders and Decisions of Commission.

In all collateral actions or proceedings before any court or administrative agency of competent jurisdiction, the orders and decisions of the Commission that have become final shall be conclusive.

§18-4-130. Rehearings Before Commission.

(1) Within 10 days after service by the Commission of any decision constituting an order or decision, any party to the proceeding and any other person aggrieved by the decision and directly affected thereby, may apply to the Commission for a rehearing in respect to any matters determined in the decision. The Commission may grant a rehearing on any or all matters raised in the request for rehearing, if in its discretion sufficient reason exists.

(2) Applications for rehearing shall be governed by general rules which the Commission may establish. If, after rehearing, it shall appear that the original order or

**CHAPTER FIVE
LAND USE AND ENVIRONMENT DEPARTMENT**

§18-5-101. Establishment.

There is hereby established a Land Use and Environment Department to administer Titles 18 and 19 of this Code.

§18-5-102. Director of Land Use and Environment.

The Manager of the Land Use and Environment Department shall be the Director. The Director shall be appointed by the Tribal Council to serve for a three year term beginning January 1, 1992, and such additional succeeding three year terms as the Tribal Council may determine. The Director shall be subject to the Tribal Personnel and Policy Procedures.

§18-5-103. Duties of the Director of Land Use and Environment.

Except as provided in this Title 18 or in Title 19, in performance of his duties, the Director shall:

- (1) administer and enforce Titles 18 and 19;
- (2) administer the operations of the Rosebud Land Use and Environment Department, using funds budgeted by the Council;
- (3) submit a proposed annual budget to the Council;
- (4) supervise all employees of the Department pursuant to delegation of authority by the Commission;
- (5) review applications for and recommend Commission action upon the following:
 - (a) land use permits,
 - (b) zoning changes,
 - (c) variances,
 - (d) conditional use permits,
 - (e) land division permits,
 - (f) Planned Unit Developments,

(g) alteration or repair of nonconforming uses, and

(h) such other permits as are required by Titles 18 and 19 as originally enacted or as amended, unless specifically provided otherwise therein, and except with respect to matters governed by Chapter 6 of Title 19 only, for which permits applications shall be reviewed and recommendations to the Commission shall be made by the Director of Water Resources.

(6) provide clerical and administrative support to the Commission; and

(7) take such other actions as are prescribed in Titles 18 and 19 or the laws of the Tribe.

§18-5-104. Director of Water Resources.

The Chief Executive Officer of the Land Use and Environment Department with respect to matters governed by Chapter 6 of Title 19 only and enforcement thereof shall be the Director of Water Resources. The Director shall be appointed by the Tribal Council to serve for a three year term beginning January 1, 1992, and such additional succeeding three year terms as the Tribal Council may determine. The Director shall be subject to the Tribal Personnel and Policy Procedures.

§18-5-105. Duties of the Director of Water Resources.

The Director of Water Resources shall exercise such duties provided in §18-5-103 as specifically relate to matters governed by Chapter Six of Title 19 only and enforcement thereof.

§18-5-106. Department Employees.

(1) The Director may employ such employees and incur such expenses as may be necessary for the proper discharge of his duties, subject to the limitations and restrictions set out in this Section.

(2) Upon the approval of the Council by resolution, the Director may utilize regular Tribal staff to exercise the duties and responsibilities set out in Titles 18 and 19.

(3) The Director may delegate to the Tribal staff by rule such of its functions as may be necessary to administer Titles 18 and 19 efficiently, consistent with the limitations of Titles 18 and 19.

(4) The total amount expended by the Director in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated for these same expenditures by the Council. The Director shall submit to the Council a line item proposed budget for the next fiscal year not later than July 1st of each year.

**CHAPTER SIX
ZONING MAPS**

§18-6-101. Establishment of Zones: Provision for Official Zoning Maps.

(1) Official Zoning Maps.

(a) The Reservation is hereby divided into zones. Such zones shall be noted on the five Official Zoning Maps which, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this Title. There shall be a separate Official Zoning Map for each South Dakota county in which the Rosebud Sioux Reservation is located, including Todd County, Tripp County, Mellette County, Gregory County, and Lyman County. A new Official Zoning Map shall be adopted and declared to be a part of this Title for every new South Dakota county in which the Rosebud Sioux Reservation is located.

(b) The Official Zoning Maps, comprising several sections, shall be as identified by the signature of the Chairman of the Council, together with the date of adoption of this Title.

(c) If, in accordance with the provisions of this Title, a change is made in zone boundaries or other matter portrayed on an Official Zoning Map, such change shall be made on the Official Zoning Map promptly after the change has been approved.

(d) No change of any nature shall be made in an Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Title. Any unauthorized change of whatever kind by any person or person shall be considered a violation of this Title and punishable as provided by applicable law.

(e) The Official Zoning Maps shall be located in the Office of the Planning Department, with certified copies in the Tribal Chairman's office. Copies of the current Official Zoning Map shall also be given to the appropriate offices of the Bureau of Indian Affairs, the federal government, and the government of the State of South Dakota. Regardless of the existence of purported copies of the Official Zoning Maps which may from time to time be made or published, the Official Zoning Maps shall be the final authority as to the current zoning status of all property within the territory described in Section 18-1-106 of this Title.

(2) Replacement of Official Zoning Maps. In the event that any Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Tribal Council may by resolution adopt a new Official Zoning Map, as needed, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending this Title or any subsequent amendment thereof.

§18-6-102. Interpretation of Zone Boundaries.

Whenever uncertainty exists as to the boundaries of zones as shown on the Official Zoning Maps, the following rules shall apply:

(1) boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

(2) boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines;

(3) boundaries indicated as approximately following city limits shall be construed as following city limits;

(4) boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

(5) boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line, shall be construed as moving with the actual shore lines;

(6) boundaries indicated as approximately following center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines; and

(7) boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (6) shall be so construed. Distances not specifically indicated on an Official Zoning Map shall be determined by the scale of the map.

Where physical or cultural features existing on the ground are at variance with those shown on an Official Zoning Map, or in other circumstances not covered by subsections (1) through (7), the Commission shall interpret the zone boundaries.

CHAPTER SEVEN
NONCONFORMING LOTS, USES AND STRUCTURES

§18-7-101. Intent.

(1) Within the zones established by this Title or amendments that may later be adopted, there may exist lots, structures, and uses of land and structures which were lawful before this Title was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Title or any such future amendment. It is the intent of this Title to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this Title to be incompatible with permitted uses in the zones involved.

(2) To avoid undue hardship, nothing in this Title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Title and upon which actual building construction or site preparation has been diligently carried on.

§18-7-102. Nonconforming Lots of Record.

(1) In any zone in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Title, a single family dwelling and customary accessory buildings may be located on any single lot of record on the effective date of adoption or amendment of this Title. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zone, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the zone in which such lot is located. Variance of area width and yard requirements shall be obtained only through action of the Commission.

(2) If two or more lots or combinations of lots in which portions of the lots with continuous frontage are in single ownership of record on the effective date of adoption or amendment of this Title and, further, if all or part of the lots do not meet the requirements of lot width and area established by this Title, then the lands involved shall be considered to be an undivided parcel for the purpose of this Title and no portion of such parcel shall be used or sold which does not meet lot width and area requirements established by this Title, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Title.

§18-7-103. Nonconforming Uses of Land.

Whenever, on the effective date of adoption or amendment of this Title, a lawful use of land exists that is made no longer permissible under the terms of this Title as enacted or

amended, such use may be continued, as long as it remains otherwise lawful, subject to the following provisions.

(1) No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Title, unless the additions conform in all respects to this Title or are approved under the procedures and standards for variances.

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use on the effective date of adoption or amendment of this Title.

(3) If any such nonconforming use of land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to the regulations specified by this Title for the zone in which such land is located.

§18-7-104. Nonconforming Structures.

Whenever a lawful structure exists on the effective date of adoption or amendment of this Title that could not be built under the terms of this Title by reason of restrictions on area, lot coverage, weight, yards, or other characteristics of the structure or its location of the lot, such structure may be continued as long as it remains otherwise lawful, subject to the following provision:

(1) No structure may be enlarged or altered in any way unless the enlargement or alteration is approved under the procedures and standards for variances;

(2) Should a structure be destroyed by any means to an extent of more than 75% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Title.

(3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

§18-7-105. Nonconforming Uses of Structure and Land.

Whenever a lawful structure and land in combination exists on the effective date of adoption or amendment of this Title, that would not be allowed in the zone under the terms of this Title, such lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a use not permitted by this Title in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved or

structurally altered in any way except to change the use of the structure to a use permitted in the zone in which it is located;

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Title, but no such use shall be extended to occupy any land outside of such building;

(3) If no structural alterations are made, any nonconforming use of a structure and land may be changed to another nonconforming use provided that the procedures for obtaining a variance are followed and the Commission finds that the proposed use is more appropriate to the zone than the existing nonconforming use. In permitting such change, the Commission may require appropriate conditions and safeguards in accordance with the provisions of the Title;

(4) Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed;

(5) Whenever a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for 180 days, the structure, or structure and land in combinations shall not thereafter be used except in conformance with the regulations of the zone in which it is located;

(6) On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repair, provided that the cubic content of the building as it existed at the time of passage or amendment of this Title shall not be increased. Nothing in this Title shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official; and

(7) Whenever nonconforming use status applies to the structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land which shall not thereafter be used except in conformance with regulations of the zone in which it is located.

**CHAPTER EIGHT
RESIDENTIAL ZONE**

§18-8-101. Purposes.

A Residential Zone (R) is established as a zone in which the principal use of the land is for residential construction and land development of varying densities designed to meet contemporary building and living standards.

In order that a Residential Zone shall further promote the general purpose of this Title, the specific intent of this Zone is:

- (1) To encourage construction upon and the continued use of land for various residential purposes.
- (2) To prohibit commercial and industrial uses of land and to prohibit any other use that would substantially interfere with the development or continuation of residential uses;
- (3) To encourage the discontinuance of existing uses of land which would not be permitted as new uses under the provisions of this Title.
- (4) To prohibit any use of land which, because of its character or size, creates requirements and costs for public services, such as police and fire protection, water supply and sewage facilities, substantially in excess of such requirements and costs if the Zone in which the land lies were developed solely for residential purposes.

§18-8-102. Allowed Uses.

No building, structure or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged or maintained in a Residential Zone except for the following uses:

- (1) Single family dwellings.
- (2) Two-family dwellings.
- (3) Multiple-family dwellings and apartment houses.
- (4) Public parks and playgrounds.
- (5) Farming, gardening, orchards and nurseries, provided that no retail or wholesale business office is maintained, and provided that no poultry or livestock shall be housed within 100 feet of any residence other than the dwelling on the same lot.
- (6) Home occupations as defined in §18-2-101 of this Title.

(7) Accessory buildings such as are ordinarily appurtenant to the permitted uses in such Zone.

(8) Special Property uses specifically allowed in such Zone as listed in Chapter Twenty Five of this Title.

§18-8-103. **Transitional Uses.**

Whenever the side of a lot abuts a Commercial or Industrial Zone, the following transitional uses are permitted provided they do not extend more than 100 feet into the Residential Zone:

(1) Medical or dental offices and clinics;

(2) Other uses of a transitional nature as determined by the Director. These transitional uses shall conform to all other requirements of this Title which apply.

§18-8-104. **Area Regulation.**

The following area regulations apply in a Residential Zone:

(1) **Lot Size and Percentage of Coverage.**

(a) **Single Family Dwelling.** No single family dwelling shall hereafter be located upon any lot or plot having an area of less than 7200 square feet, or an average width of less than 60 feet. Nor shall the building, including its accessory buildings, cover more than 50% of the total lot area.

(b) **Two-Family Dwelling.** No two family dwelling shall hereafter be located upon any lot or plot having an area of less than 9600 square feet, or an average width of less than 80 feet. Nor shall the building, including its accessory buildings, occupy or cover more than 50% of the total lot area.

(c) **Multiple-Family Dwelling.** No multiple family dwelling of three or more residential units shall hereafter be located upon any lot or plot having an area of less than 10,800 square feet, or an average width of less than 890 feet. Nor shall an apartment or multiple-family dwelling of any type be located in such a manner as to provide less than 2000 square feet of land area for each living unit including the land on which the unit is built. No multiple family dwelling, or apartment, including its accessory building, shall occupy or cover more than 50% of the total lot area.

(2) **Lot Sizes.** Larger lot sizes for individual water and sewage systems or community water and sewage systems may be required by the Director of Water Resources.

(3) **Set-Back Requirements.**

(a) **Front.** There shall be a minimum set-back for all buildings or other structures from the centerline or rights-of-way as follows:

<u>Rights-of-Way, Public</u>	<u>Set-Back</u>
Major or Secondary Arterials	60 feet
Collector or Access Roads	50 feet

<u>Rights-of-Way, Private</u>	
Any road, land, street or other access way in private ownership	50 feet

Any Waterway* 200 feet

* See §18-2-101(51), above.

(b) **Side.** There shall be a side set-back of not less than five feet on each side of a dwelling except that a set-back on a corner lot shall not be less than 10 feet along the flanking or side street line.

(c) **Rear.** There shall be a rear set-back of not less than 15 feet in the rear of each dwelling. Accessory buildings may be located in the rear of each dwelling. Accessory buildings may be located in the rear yard provided they shall maintain a set-back of five feet from any lot line.

(4) **Height Requirements.** No building shall exceed a height of 45 feet or three stories, whichever is the lesser.

CHAPTER NINE COMMERCIAL ZONE

§18-9-101. Purposes.

A Commercial Zone (C) is established as a zone in which the principal use of the land is for various types of commercial activities which provide the outlets for commodities, personal services, professional services and other business uses related to the needs of the particular section of the community in which it is located.

In order that a Commercial Zone shall further promote the general purpose of this Title, the specific intent of this Title is:

(1) To protect commercial development, as far as is possible and appropriate in each area, against the establishment of uses which would create hazards, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable influences, or heavy trucking traffic;

(2) To protect commercial development against congestion, so far as is possible and appropriate in each area, by limiting the bulk of buildings in relation to the land around them and to one another;

(3) To provide sufficient space in appropriate locations for the transaction of all types of commercial and miscellaneous service activities in beneficial relation to one another, and thus to strengthen the economic base of the community;

(4) To provide appropriate space, and in particular sufficient depth from the street, to satisfy the needs of modern commercial development, including the need for off-street parking, in areas where a large proportion of customers come by automobile;

(5) To encourage the tendency of commercial development to concentrate, to the mutual advantage of both customers and merchants;

(6) To promote the most desirable use of land in accordance with a well-considered plan, to promote the beneficial and appropriate development of all land, to promote stability of commercial development to protect the character and established pattern of desirable development in each area, to conserve the value of the land, and thus to promote public safety, convenience, prosperity and welfare.

§18-9-102. Allowed Uses.

No building, structure, or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged, or maintained in a Commercial Zone except for the following uses:

- (1) Any use permitted in a Residential Zone;
- (2) Retail trade establishment; and
- (3) Commercial and professional service establishment.

§18-9-103. Area Regulation.

The following area regulations shall apply in a Commercial Zone.

(1) **Lot Size and Percent of Coverage.** No buildings, including all accessory buildings on one lot, shall occupy or cover more than 50% of the total lot area.

(2) **Set-Back Requirements.**

(a) **Front.** There shall be a minimum set-back for all buildings or other structures from the centerline of rights-of-way as follows:

<u>Rights-of-Way, Public</u>	<u>Set Back</u>
Major or Secondary Arterials	60 feet
Collector or Access Roads	50 feet
<u>Rights-of Way, Private</u>	
Any road, street or other access way in private ownership	50 feet
<u>Any Waterway*</u>	200 feet

* See §18-2-101(51), above.

(b) **Side.** No side set-back is required except for property abutting a Residential Zone in which case the side yard on the abutting side shall be the same as that required in the Residential Zone. On a side abutting a street, the set-back shall be a minimum of ten feet for all structures.

(c) **Rear.** No rear set-back is required in a Commercial Zone.

(3) **Height Requirements.** No building shall exceed a height of 45 feet or three stories, whichever is the lesser.

**CHAPTER TEN
INDUSTRIAL ZONE**

§18-10-101. Purposes.

The Industrial Zone (I) is established as a zone in which the principal use of the land is for the various types of industrial activities and development which are considered to be compatible with and essential to the economic well-being of the community in which it is located.

In order that an Industrial Zone shall further promote the general purpose of the Title, the specific intent of this Zone is:

- (1) To establish standards for the height and size of buildings, the areas and dimension of yards and open spaces;
- (2) To provide facilities to minimize traffic congestion;
- (3) To provide for facilities and the operation of industries to minimize noise, glare, air pollution, water pollution, and fire and safety hazards in Industrial Zones.

§18-10-102. Allowed Uses.

No building, structure, or land shall be used and no building or structure shall be hereafter located, established, altered, enlarged, or maintained in an Industrial Zone except for the following uses:

- (1) Any use permitted in a Commercial Zone, other than a dwelling except when exclusively connected with the business involved.
- (2) Manufacturing, repairing, compounding, processing, packing, or storage;
- (3) Wholesale distributing or outlet;
- (4) Railroad facilities, such as switching yards, spur, or holding tracks;
- (5) Kennels;
- (6) Motor vehicle wrecking or junk yard, provided that it is fully screened or fenced so that the storage and operation is not visible from my public right-of-way.

§18-10-103. Area Regulations.

(1) **Setback.** There are no front, side, or rear set-back requirements except for those found in §18-10-104; provided, however, that no building or use shall be allowed within 75 feet of a Residential Zone or a lot or parcel containing a dwelling in another zone.

(2) **Landscaping.** The open area next to a Residential Zone or dwelling shall be landscaped and maintained with trees, shrubs, hedges or other condition necessary to reduce adverse impacts the industrial use may have on adjacent properties.

(3) **Additional Limitations.** The Director may impose additional limitations on openings, access, location of buildings, activities or other features of the proposed use to reduce the impact on adjacent uses.

§18-10-104. Other Regulations.

(1) **Rights-of-Way Preservation.** There shall be a minimum set-back for all buildings or other structures from the center lines of rights-of-way as follows:

<u>Rights-Of-Way</u>	<u>Set Back</u>
Major or secondary arterials	40 feet
Collector of access roads	30 feet
<u>Rights-of-Way</u>	
Any road, lane, street or other access way in private ownership	30 feet
<u>Any Waterway*</u>	200 feet

* See §18-2-101(51), above.

(2) **Parking and Loading Space.** Parking and loading space shall be provided as required in §18-24-101 of this Title.

CHAPTER ELEVEN
NATURAL RESOURCE CONSERVATION ZONE

§18-11-101. Purpose.

The Natural Resource Conservation Zone (NRC) is established as a zone to:

- (1) Preserve and protect Reservation forest lands for continued production of timber and other forest crops;
- (2) Protect watershed, fish and wildlife habitats and populations, non-developed recreational uses, scientific uses and other such forest uses;
- (3) Provide for limited development of recreational uses not in conflict with the other uses for which the Zone is created.

§18-11-102. Allowed Uses.

Within a Natural Resource Conservation Zone, the following uses are allowed and no building, structure or premise shall be located, established, used, arranged, or structurally altered or enlarged except for one or more of the following uses:

- (1) Forest uses, including the growing and harvesting of trees; open space watershed protection; wildlife and fish habitat; vegetative soil stabilization; air and water quality maintenance, undeveloped or low intensity outdoor recreational activities;
- (2) Facilities and test plots for experimental and research activities associated with forest management or forest products;
- (3) fish and wildlife management and related facilities;
- (4) processing, storage, and sale of firewood.

§18-11-103. Conditional Uses.

The following uses may be permitted in a Natural Resource Conservation Zone under a conditional use permit granted in compliance with the standards in §18-22-103:

- (1) Exploration, mining and processing of geothermal, aggregate, mineral or other subsurface minerals;
- (2) A facility for the primary processing of forest products, such as the use of a chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market;

- (3) Commercial activities in conjunction with forest uses defined above;
- (4) Power generation facilities;
- (5) Parks, playgrounds, compounds, hunting and fishing preserves, trails for non-motorized recreational transport (such as walking, bicycling, or horseback riding) serving the general public and limited structures or buildings associated with such activities;
- (6) Livestock grazing;
- (7) One single family dwelling per parcel on contiguous ownership when necessary and accessory to a forest use;
- (8) A mobile home for security personnel or as a temporary use while constructing a dwelling necessary and accessory to a forest use, the latter use being limited to two years; and
- (9) A mobile home used in conjunction with forest management activities.

§18-11-104. Criteria for Conditional Uses.

The following criteria must be met for the approval of conditional uses in the Natural Resource Conservation Zone:

- (1) The use is compatible with forest uses and the intent of the Natural Resource Conservation Zone;
- (2) The use does not interfere with, or enhances, forest uses on adjacent lands;
- (3) The use does not materially alter the stability of the overall land use pattern of the Natural Resource Conservation Zone;
- (4) If the use involves construction of any structure, the structure is sized minimally to meet its purposes and to limit impacts on forest uses, and is located in a manner most likely to minimize impacts on forest uses or removal of land from primary forest uses; and
- (5) The use will not have a significant adverse impact on tree growth or harvesting, watersheds, fish and wildlife habitat or populations, soil or slope stability, air or water quality and undeveloped outdoor recreation.

§18-11-105. Divisions of Land.

Subdivision and Planned Unit Developments are not consistent with the purposes and intent of the Natural Resource Conservation Zone and are prohibited. Land in the Natural Resource Conservation Zone may be partitioned only pursuant to the following rules:

(1) Any proposed parcel is shown to be of adequate size to support both physically and economically the specific permitted or conditional use proposed, with the presumption that forest uses require at least 80 acres of land; and

(2) If a conditional use is contemplated on any proposed parcel, the Land Use and Environment Commission shall consider the partition and the conditional use together and shall approve the partition only if the conditional use permit is granted.

§18-11-106. **Signs.**

No signs are permitted in a Natural Resource Conservation Zone except as required for resource management, traffic regulation, or safety.

CHAPTER TWELVE
NATURAL RESOURCE DOMINANT RESIDENTIAL ZONE

§18-12-101. Purpose.

The Natural Resource Dominant Residential Zone (NDR) is established as a zone to permit the development of a limited number of residences in forested areas under strict conditions preserving as much of the forest environment as possible.

§18-12-102. Allowed Uses.

Within a Natural Resource Dominant Residential Zone, the following uses are allowed and no building, structure or premise shall be located, established, used, arranged, structurally altered or enlarged except for one or more of the following uses:

- (1) Forest uses, including the growing but not the commercial harvesting of trees; open space; watershed protection, wildlife and fish habitat; vegetative soil stabilization; air and water quality maintenance, undeveloped recreational activities;
- (2) Facilities and test plots for experimental and research activities associated with forest management or forest products; and
- (3) Fish and wildlife management and related facilities.

§18-12-103. Conditional Uses.

The following uses may be permitted in a Natural Resource Dominant Residential Zone under a conditional use permit granted in compliance with the standards in §18-22-103:

- (1) Parks, playgrounds, campgrounds, hunting and fishing preserves, trails for non-motorized transportation (such as walking, bicycle riding, or horseback riding) serving the general public and limited structures or buildings associated with such activities;
- (2) Single family dwellings.

§18-12-104. Criteria For Conditional Uses.

The following criteria must be met for the approval of conditional uses in a Natural Resource Dominant Residential Zone.

- (1) The use is compatible with the forest uses permitted outright in the Zone and the intent of the Natural Resource Dominant Residential Zone;

(2) The use will not have a significant adverse impact on watersheds, fish and wildlife habitat, soil or slope stability, air or water quality, and undeveloped outdoor recreation; and

(3) If the use includes dwellings, the dwellings are built only pursuant to a planned unit development which limits, to the greatest extent feasible, the impact on natural systems and forest uses, which preserves as many live trees as feasible, and which incorporates substantial areas of open space into its plan.

§18-12-105. Signs.

No signs are permitted in a Natural Resource Dominant Residential Zone except as required for resource management, traffic regulation, or safety.

**CHAPTER THIRTEEN
PRIMARY AGRICULTURAL ZONE**

§18-13-101. Purposes.

The Primary Agricultural Zone (PA) is established as a zone to include lands on which the primary use is the conduct of commercial agriculture. This Zone is intended to:

- (1) Preserve and protect the Reservation's best agricultural land for agricultural purposes;
- (2) To prohibit or discourage uses which would interfere with the use of agricultural land for agricultural purposes.

§18-13-102. Allowed Uses.

Within a Primary Agricultural Zone, the following uses are permitted, and no building, structure, or premise shall be located, established, used, arranged structurally altered, or enlarged, except for one or more of the following uses:

- (1) Farm uses, including the employment of land and buildings or structures for the purpose of obtaining a profit or subsistence by raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairy products or any other agricultural or horticultural use or animal husbandry and any combination thereof. Farm use includes the preparation, processing, and storage of the products raised on such land for human or animal use and the disposal by marketing or otherwise, and buildings to conduct such activities;
- (2) Forest uses, as defined in the description of that term in the Natural Resource Conservation Zone;
- (3) Stands for the display and sale of products raised or grown on the premises;
- (4) Accessory buildings ordinarily appurtenant to the conduct of farming or agriculture;
- (5) Single family dwellings or mobile homes and accessory structures used only in conjunction with a farm use, to house those persons engaged in significant amounts of work related to farming activity or the relatives or family of such persons;
- (6) Single family dwellings or mobile homes and accessory structures on home assignments, issued pursuant to Article VIII, Section 1, of the Tribal Constitution, or issued pursuant to Bylaw 26 of the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation.

(7) Single family dwellings or mobile homes and accessory structures on exchange assignments, issued pursuant to Article VIII, Section 3, or leased pursuant to Section 4, or reassigned pursuant to Section 5, of the Tribal Constitution.

(8) Single family dwellings or mobile homes and accessory structures on tribal land leased pursuant to Article VIII, Section 7, of the Tribal Constitution, or leased pursuant to Bylaw 34 of the Bylaws, Tribal Land Enterprise, Rosebud Indian Reservation.

(9) Home occupations; and

(10) Open space.

§18-13-103. Conditional Uses.

The following uses may be allowed as conditional uses in the Primary Agricultural Zone;

(1) All special uses identified in Chapter Twenty One of this Title.

(2) Tribal parks and playgrounds, hunting and fishing preserves or habitat conservation areas.

§18-13-104. Criteria For Conditional Uses.

(1) Special uses identified in Chapter Twenty One may be permitted only if it is shown that:

(a) there is no other reasonably practical alternative site for the use elsewhere that would not cause greater disruption to the goals of this Title;

(b) the special use is designed and cited so as to minimize the utilization of high quality agricultural land for non-agricultural uses;

(c) the use does not materially alter the stability of the overall land use pattern of the Primary Agricultural Zone.

(2) Other conditional uses may be permitted only if it is shown that:

(a) the use is compatible and does not interfere with agricultural activities on adjacent lands;

(b) agricultural activities on adjacent lands are compatible with and do not interfere with the conditional use;

(c) the use is so designed and sited so as to minimize the utilization of high quality agricultural land for non-agricultural purposes; and

(d) the use does not materially alter the stability of the overall land use pattern of the Primary Agricultural Zone.

§18-13-105. Division of Land.

Subdivisions and Planned Unit Developments are not consistent with the purposes and intent of the Primary Agricultural Zone and are prohibited. Land in the Primary Agricultural Zone may be partitioned only pursuant to the following rules:

(1) Any proposed parcel is shown to be of adequate size to support both physically and economically the specific permitted or conditional use proposed, with the presumption that agricultural uses require at least two and one-half acres of land; and

(2) If a conditional use is contemplated on any proposed parcel, the Planning Commission shall consider the partition and the conditional use coincidentally and shall approve the partition only if the conditional use permit is granted.

(3) No area of agricultural land shall be subdivided into smaller units than two and one-half acres, as provided by Article VIII, Section 5(c), of the Constitution of the Rosebud Sioux Tribe of South Dakota.

§18-13-106. Signs.

No signs are permitted in a Primary Agricultural Zone except as are required for agricultural or forest management, traffic, safety, or the advertisement of commercial enterprises allowed in the Zone, in which case the signs shall be no more than nine square feet and no more than two per enterprise.

**CHAPTER FOURTEEN
HISTORIC PRESERVATION ZONE**

§18-14-101. Purposes.

The Historic Preservation Zone (HP) is established as a zone to:

- (1) Preserve, protect, maintain and enhance those historic resources that reflect or trace the course of human influence on lands within the Rosebud Indian Reservation;
- (2) Encourage the understanding of and reverence for the actions of Sioux Indians in seeking to protect the identity and sovereignty of the Sioux Nation and its constituent parts;
- (3) To preserve, protect, and learn from archeological resources on the Rosebud Indian Reservation;
- (4) To permit only those land uses that achieve these other purposes.

§18-14-102. Allowed Uses.

Within an Historic Preservation Zone, the following uses are allowed and no building, structure, or premise shall be located, established, used, arranged, altered, or enlarged, except for one or more of the following uses:

- (1) Historic identification markers, trails, and interpretive centers;
- (2) Uses existing at the time of the passage of this Title that, in each particular Historic Preservation Zone, are declared compatible with historic preservation and are so noted on the Official Zoning Map;
- (3) Nondeveloped natural resource use, such as fish and wildlife habitat;
- (4) Religious, cultural, and ceremonial activities;
- (5) Farming activities, as defined in §18-2-101 of this Title, and forest activities as defined in §18-2-101 of this Title, other than the harvest of trees except for the construction of any structures accessory to these activities.

§18-14-103. Historic Structures.

If a structure within an Historic Preservation Zone is designated for historic preservation as part of the Zone, and is so noted on the Official Zoning Map, then the following restrictions will apply to any use or alteration of the building:

(1) No building designated as an historic preservation site may be remodelled, enlarged, repaired, or otherwise altered without first seeking a permit from the Director of the Land Use and Environment Department .

(2) The Director shall grant a permit under this section only on the following conditions:

(a) The exterior design, material and detail shall be preserved to the maximum extent feasible;

(b) Any additions to the structure do not exceed that which was traditional for the building style, and to the greatest extent feasible, maintain the same scale, proportion, building scale; and materials as the original structure.

(c) The building improvements overall are compatible with the architectural style and character of the original building.

(3) No person shall demolish a building designated for historic preservation without applying for a permit from the Director.

(a) If the building has been damaged in excess of 60% of its value, the permit for demolition shall be issued without any preservation conditions;

(b) In all other cases, the permit shall not be issued for 45 days after the application for demolition, during which time the Director shall make reasonable efforts to identify alternatives to demolition with the goal of maintaining the structure. A lack of private or tribal funding to pay to preserve the structure will be sufficient to allow demolition.

§18-14-104. Signs.

No signs are permitted in an Historic Preservation Zone except as required for traffic, safety, or historical designation, interpretation or information.

CHAPTER FIFTEEN
RESERVATION NATURAL AND CULTURAL RESOURCE ZONE

§18-15-101. Purposes.

The Natural and Cultural Resource Zone (NCR) is established as a zone to insure protection and preservation of the Tribal cultural and natural resources and to insure the right of tribal members to have an area in which they may camp, hunt, fish, and gather roots and berries and worship in the tradition of their culture. The Natural and Cultural Resource Zone is further established to prevent uncontrolled development or land use which could result in irreversible damage to important tribal historical, cultural, religious, or aesthetic values or natural systems or processes or could unreasonably endanger life and property.

§18-15-102. Allowed Uses by Members Only.

Only the following uses by members of the Rosebud Sioux Tribe are allowed in a Natural and Cultural Resource Zone. No uses by nonmembers are allowed within the Zone. Furthermore, no building, and no building, structure, or premise shall be located, established, used, arranged, altered or enlarged, except in conjunction with one of the following uses:

- (1) Harvesting wild crops;
- (2) Hunting, fishing, and trapping by tribal members only;
- (3) Camping in temporary structures;
- (4) Tribal camps for the education and recreation of Tribal members and continued tribal cultural activities;
- (5) Conduct of religious or cultural activities;
- (6) Improvement, repair and maintenance of cultural, religious and historical sites;
- (7) Maintenance of pre-existing roads and other access routes.

§18-15-103. Access and Use Restricted to Tribal Members; Tribal Permits Required for Nonmember Access.

A Natural and Cultural Resource Zone is closed to all nonmembers other than persons bearing tribally issued permits. Applications for such permits are to be directed to the Director of the Land Use and Environment Department. Permits shall be issued to only the following persons:

- (1) Owners of record of lands within this Zone as of January 1, 1992 and their successors in interest;

(2) Persons or firms doing business with the Rosebud Sioux Tribe or a subdivision or agency thereof or the federal government which business requires access to the Zone;

(3) Employees to the Rosebud Sioux Tribe or Bureau of Indian Affairs; or

(4) Such other persons who can demonstrate that their access to the Zone directly benefits the Tribe.

Tribal permits shall be issued only for the limited purpose of access to the Zone. No nonmember shall be allowed to conduct a use of the Zone, even such uses permitted to members.

CHAPTER SIXTEEN
GENERAL ENVIRONMENTAL PROTECTION OVERLAY ZONE

§18-16-101. Purposes.

The General Environmental Protection Overlay Zone (GEPO) is established as a zone to protect and maintain soil stability, water quality, watershed values, fish and wildlife habitat, natural areas, scenic views, and other valuable or unique environmental or ecological features.

§18-16-102. Allowed Uses.

The following uses are permitted in the General Environmental Protection Overlay Zone:

(1) Uses permitted in the underlying Zone that do not require construction of roads or structures, the harvest or felling of trees, or the alteration of geology, topography, or hydrology of the area, other than livestock grazing which is not a permitted use unless specifically noted on the zoning map.

§18-16-103. Conditional Uses.

All other uses permitted outright or permitted conditionally by the underlying Zone shall be conditional uses.

§18-16-104. Criteria for Conditional Uses.

The following criteria must be met for the approval of conditional uses in a General Environmental Protection Overlay Zone.

(1) The use will not interfere with or will enhance the environmental and ecological values of the land for the protection of which the Environmental Protection Overlay Zone was applied;

(2) The use will not materially alter the stability of the overall land use pattern of the underlying Zone or the purpose of the Environmental Protection Overlay Zone.

**CHAPTER SEVENTEEN
FLOOD PLAINS OVERLAY ZONE**

§18-17-101. Purposes.

The Flood Plains Overlay Zone (FPO) is established as a zone to:

- (1) minimize flood damage to human structures;
- (2) control the alteration of natural flood plains, stream channels and natural protective barriers which hold, accommodate or channel flood waters;
- (3) restrict or prohibit uses which are dangerous due to water or erosion hazards or which present the possibility of damage to structures from flood waters;

§18-17-102. Allowed Uses.

All activities and uses of land set forth in the underlying specific zones located within the Flood Plains Overlay Zone are declared special conditional uses subject and must obtain a flood plain development permit if the use involves construction of any structures or alteration of flood plain geology or topography for human or animal occupancy, provided that the following uses need not seek such a permit:

- (1) minor repairs or alterations to existing structures the cost of such does not exceed 20% of the value of the structure, other than any improvements required to comply with existing health, sanitary, or safety codes or which are necessary to ensure safe living conditions;
- (2) placement of utility facilities necessary to serve established and permitted uses within flood plain areas, provided that this exception does not apply to buildings or substations which must obtain a flood plain development permit.

§18-17-103. Flood Plain Development Permit.

- (1) Except as provided in §18-17-102, a flood plain development permit must be obtained for construction of structures or alteration of geology or topography within the Flood Plain Overlay Zone.
- (2) Application for a flood plain development permit shall be made to the tribal Land Use and Environment Department and shall contain, at a minimum, a description of the proposal development and a map showing the property boundary, its location in the Flood Plain Overlay Zone, and the location of the proposed development. The Land Use and Environment Department may, upon receiving an application, request such additional information as it needs to review the application.

§18-17-104. Permit Approval.

The Director shall issue flood plain development permits only if he can find on the information available to him that:

- (1) no residential structures are involved in the proposed development;
- (2) any non-residential structures included in the proposal have elevated floors or are otherwise constructed so as to be flood proofed by making walls below expected flood levels watertight or substantially impermeable to the passage of water;
- (3) the development does not involve a modification of a floodway that reduces its flood carrying capacity.

CHAPTER EIGHTEEN
PLANNED UNIT DEVELOPMENT; SPECIFIC PROCEDURES

§18-18-101. Purposes.

The Planned Unit Development (PUD) Zone is established as a zone to:

- (1) Encourage flexibility in design and development that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable use of the land.
- (2) Permit flexibility in design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas and otherwise better to utilize the potentials of sites characterized by special features of geography, topography, geology, size or shape.
- (3) Facilitate the adequate and economical provision of streets and utilities.
- (4) Preserve the natural and scenic qualities of open areas and protect environmentally sensitive areas.

§18-18-102. Definitions.

In this Chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- (1) "Planned Unit Development" means the development of an area of land as a single entity for a number of dwelling units or a number of uses, according to a plan which does not correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the regulations otherwise required.
- (2) "Common Open Space" means an area within a development designed and intended for use or enjoyment of all residents of the development or for the use and enjoyment of the public in general. Common open space land will be maintained in perpetuity.

§18-18-103. Limitations.

Planned Unit Development Zones are allowed in any zone except a Primary Agricultural Zone, Natural Resource Conservation Zone, Reservation Natural and Cultural Resource Zone, Historic Preservation Zone, and areas subject to the Flood Plain Overlay Zone. Planned Unit Development may contain uses allowed outright or conditionally in Residential or Commercial or Industrial Zones, or special uses, Chapter Nineteen of this Title, consistent and compatible with the other uses.

§18-18-104. Application For Planned Unit Development Zone.

An application for a Planned Unit Development Zone must be filed with the Director and must set out detailed information concerning the following subjects as they may be involved in or provided for by the Planned Unit Development Project:

- (1) Proposed ownership pattern.
- (2) Operation and maintenance proposals, i.e., homes, associations, condominium, co-op or other
- (3) Waste disposal facilities
- (4) Lighting
- (5) Water supply
- (6) Public transportation
- (7) Community facilities
- (8) General timetable of development.

§18-18-105. Notice and Hearing on Application.

Upon receipt of a petition for a Planned Unit Development Zone, the Commission shall give notice of the petition as follows:

- (1) The Commission shall provide notice that includes
 - (a) A statement of the time, place, and nature of public proceedings on any proposed Planned Unit Development Zone.
 - (b) A statement of the purpose of the Planned Unit Development Zone and the legal authority under which it is proposed;
 - (c) Either the specific language of the proposal or a description of the proposal's contents;
 - (d) Whenever the language of the proposal is not included in the notice, a statement that the proposal is available free of charge from the Department and an explanation of how to obtain a copy; and
 - (e) The name of the person in the Department to whom the public may direct questions about the proposal.

- (2) The notice shall be publicized by:
- (a) Being provided to each member of the Council;
 - (b) Being publishing at least twice in a newspaper of general circulation on the Reservation; and
 - (c) Being posted conspicuously at the Tribal Administrative Building.

§18-18-106. Public Participation in Establishing a Planned Unit Development.

No sooner than 10 days nor later than 30 days after issuance of the last notice as required by §18-18-105, the Commission shall schedule a public meeting at which any person may express his views on the proposal orally or in writing. The Commission may accept written comments up to 14 days after the date of the hearing. The Commission may set a reasonable limit on the length of time each person may speak.

§18-18-107. Waiver by the Tribal Council or Commission of Notice and Hearing for Developments that are Tribally or Federally Funded.

In its sole discretion, the Commission or Tribal Council may waive the notice requirement of §18-18-105 and the hearing requirement of §18-18-106, above, when the Planned Unit Development petitioned for is funded by either the Tribe or the federal government.

§18-18-108. Commission Action and Effective Date.

(1) If, after hearing on any petition, the Commission determines to grant the petition for a Planned Unit Development Zone, it shall announce its decision on the proposal by:

- (a) Providing a copy of its decision to each member of the Council;
- (b) Publishing its decision once in a newspaper of general circulation on the Reservation; and
- (c) Posting a copy of its decision conspicuously at the Tribal Administrative Building.

(2) The final action of the Commission, as published by the Commission, shall be effective and shall be noted on the appropriate Official Zoning Map 45 days after the Commission's decision is announced, unless before that date, the Council acts to amend or reverse the Commission's decision.

§18-18-109. Commission's Decision.

(1) The Commission may approve an application for a Planned Unit Development Zone only if it complies with §18-18-103 and §18-1-104. Further, in making its decision, it shall apply and provide written funding on the following criteria.

- (a) Substantial conformance to this Title.
- (b) The proposal's harmony with the surrounding area, or its potential future use;
- (c) The system of ownership and means of development, preserving and maintaining space;
- (d) The adequacy of the size of the proposed Zone to accommodate the contemplated development;
- (e) The proposal's achievement of the purposes of this Title.

(2) The Commission may grant, deny, or deny with conditions, any Planned Unit Development Zone application and may require binding commitments or posting of a bond to insure completion of the Planned Unit Development Project as approved.

(3) Approval of application for a Planned Unit Development Zone alters the zone covering the land in question. Upon approval, the new zoning designation shall thenceforth be: "Planned Unit Development Zone."

(4) The Commission's decision may be appealed pursuant to this Title.

§18-18-110. Final Development Plan and Program.

Upon being granted approval by action of the Commission, the applicant shall prepare a final Planned Unit Development Plan containing the enumerated elements and meeting the density, open space and other requirements listed below.

(1) Plan Elements.

(a) Existing maps drawn to scale of not less than 1 inch to 100 feet and proposed contour map.

(b) Location, with the names, of all existing and proposed streets, public ways, railroads and utility rights-of-way, parks or other open spaces and all land uses within 500 feet of the boundary of the development.

(c) Existing sewers, water mains, and other underground facilities within and adjacent to the development and their certified capacities.

(d) Proposed sewer or other waste disposal facilities, water mains and other underground utilities.

(e) Preliminary subdivision plan.

(f) Proposed land use plan.

(g) Community facilities plan.

(h) Location and amount of open space, not to be less than 35% of the entire area designated a Planned Unit Development Zone.

(i) Traffic flow plan.

(j) Location and dimension of walks, trails or easements

(k) Location, arrangement, number and dimensions of truck loading and unloading spaces and docks.

(l) Location, arrangement, number and dimensions of auto garages and parking spaces, width of aisles, bays and angles of parking.

(m) Preliminary plans, elevation of typical building or structures, indicating general height, bulk and number of dwelling units.

(n) Approximate location, height, and materials of all walls, fences and screen plantings.

(o) Indication of stages of development.

(2) Program Elements.

(a) Statement of goal and objectives.

(b) Evidence of resources available for development.

(c) Tables showing total number of acres, distribution of area by use, percent designated for each building, type of off-street parking, streets, parks, playgrounds, schools and open spaces.

(d) Tables indicating overall densities and density-by-dwelling-types, and any proposal for the limitations of density.

(e) Provisions to ensure maintenance of common open space in perpetuity.

(3) **Project Densities.** The Commission may approve population or development density for a Planned Unit Development even though such density may be greater than that specified in this Title for the area containing the Planned Unit Development if, in the opinion of the Commission, the design of the Planned Unit Development will not result in inconvenience or unsafe access to the Planned Unit Development or excessive burden on parks, recreation area, schools and other public facilities which serve or are proposed to serve the Planned Unit Development.

(4) **Common Open Space Requirements.**

(a) **Common Open Space in a Planned Unit Development.**

(i) The location, shape, size and character of the open space must be suitable for the Planned Unit Development.

(ii) Common open space must be suited for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the Planned Unit Development, considering its size, density, expected population, topography and number and type of dwelling units to be provided.

(iii) Common open space must be suitably improved for its intended use, but common open space containing natural features may be left unimproved if the Commission so allows. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for common open space and must conserve and enhance the amenities of the common open space in regards to its topography and unimproved condition.

(b) **Common Open Space Improvement.** The development schedule, which is part of the Development Plan, must coordinate improvement of common open space, construction of buildings, structures and improvements in the common open space, and the construction of residential dwellings in the Planned Unit Development.

(5) **Retention and Maintenance of Common Open Space.**

(a) The final Development Plan and program shall include a provision approved by the Commission as being sufficient to assure permanent retention and maintenance of the common open space in a Planned Unit Development Zone. Such assurance may be in the form of restrictive covenants, dedication of open space to the public where such dedication will be accepted by the Council, an undertaking by an association of owners or tenants of the property within the Planned Unit Development Zone, or in any other form or by any other method approved by the

Commission as being practical and legally sufficient to assure the permanent retention and maintenance of the common open spaces. All legal documents to carry out the plan and program in this regard shall be filed by the applicant with the final Development Plan and program and shall be subject to approval as to form by the Tribal Attorney. All such plans and programs shall contain a provision whereby the Rosebud Sioux Tribe will be vested with the right to enforce the permanent retention and maintenance of the common open space and further, that in the event the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the Development Plan and program, then in such an event, the Rosebud Sioux Tribe may, at its option, cause necessary maintenance to be performed and assess the cost thereof to the owners of the property within the Planned Unit Development Zone.

(b) No common open space may be put to any use other than as specified in the approved final Development Plan unless the Development Plan has been modified to permit such other use pursuant to §18-20-110. No such modification of use shall be deemed as a waiver of any of the provisions of the approved final Development Plan, assuring the permanent retention and maintenance of the common open space.

§18-18-111. Application Required for Modification to Development.

(1) **Major Modification.** Application for major modifications in the final Development Plan and program must be submitted to the Commission and hearings held as if such application were an original application for a Planned Unit Development Zone.

(2) **Minor Modification.** Minor modifications in the final Development Plan and program may be approved by the Director. Such changes may include minor shifting of the location of buildings, proposed streets, public or private ways between the easements, parks or other features of the plan, but shall not include those changes of boundaries, changes in land use or other changes of location which are not devoted to specific land use.

(3) **Tribal and Federal Developments Exempt.** This section shall not apply to tribally and federally funded Planned Unit Developments; neither the Commission nor the Director shall be required to approve modifications, either major or minor, to such developments.

§18-18-112. Review of Planned Unit Development Rezone.

If, within one year after the granting of an application for a Planned Unit Development Zone, substantial construction has not been performed on the approved project, the Commission shall review on its own motion the grant of such application at a public hearing after giving notice of such hearing in the same mode and manner as notice is given of a hearing upon an application for a Planned Unit Development Zone pursuant to §18-18-105. In addition, such notice shall be given to all persons claiming any right, title

or interest of record in and to the affected property and shall be given at least 20 days prior to such hearing.

§18-18-113. Commission Action and Effective Date.

(1) After a review hearing on any such Planned Unit Development, the Commission shall determine whether to continue the existence of such Planned Unit Development, or to return the area within such Planned Unit Development to its original zoning status, and shall announce its decision in the same mode and manner as notice is given of a decision upon an application for a Planned Unit Development Zone pursuant to §18-18-107.

(2) The final action of the Commission, as published by the Commission, shall be effective and shall be noted on the appropriate Official Zoning Map 45 days after the Commission's decision is announced, unless before that date, the Council acts to amend or reverse the Commission's decision.

§18-18-114. Reconstruction of Buildings or Improvements.

Replacement or reconstruction of any buildings or improvements to buildings damaged or destroyed shall substantially conform to the originally approved Planned Unit Development Plan.

§18-18-115. Any Waterway.

No Planned Unit Development project will be allowed within 200 feet of any waterway, see §18-2-101(51), above, and not less than 15 feet in elevation above the normal flow of any waterway. This height restriction shall not apply to man-made ditches for irrigation purposes.

CHAPTER NINETEEN SPECIAL PROPERTY USES

§18-19-101. General Provisions.

All of the uses listed in this section and all matters directly related thereto are declared to be uses possessing characteristics of such unique and special form as to make impractical their being included automatically in any zone and the authority for the location and operation thereof shall be subject to review and the issuance of a Special Property Use Permit by the Director. Special Use Permits may not be granted for use in a zone from which it is specifically excluded and may be subject to other conditions as the Director deems appropriate to accomplish the purposes of this Title. None of these uses may be permitted in the following Zones: Reservation Natural and Cultural Resources, Historic Preservation (except to the extent the use can both preserve and use historic structures, Environmental Protection Overlay Zone, and Natural Resource Conservation Zone. Special Property Use Permits may contain conditional limitations.

§18-19-102. List of Special Uses.

(1) **Automobile Dismantling, Wrecking or Junk Yards.** Such uses shall be specifically excluded from all but Commercial and Industrial Zones.

(2) **Public Cemeteries.** Such uses shall be specifically excluded from Primary Agricultural Zones. However, family burial plots and burials conducted in the tradition of the Tribe shall be permitted within Primary Agricultural Zones.

(3) **Charitable Institutions and Orphanages.** Such uses shall be specifically excluded from Industrial Zones.

(4) **Churches.** Such uses must meet the following requirements:

(a) A church may exceed the height limit of the zone in which a church may propose to locate provided that the buildings are set back from all property lines at least one additional foot for each foot of excess height.

(b) The height of the spire, tower or similar feature of a church may exceed the height limit of the zone in which a church may propose to locate, provided that it is not intended for human occupancy and further provided that it is removed not less than 20 feet from any adjoining lot line.

(5) **Crematories, Columbaria and Mausoleums.** Such uses shall be specifically excluded from Residential Zones unless inside of a cemetery.

(6) **Drive-In Theaters, Race Tracks or Other Outdoor Commercial Amusements of a Permanent Nature involving Large Assembly of People.** Such uses shall be specifically

excluded from all zones except Commercial and Industrial Zones, and the following requirements must be met for mobile home sites containing more than three mobile homes:

(a) Access to such uses shall be only from full width streets or roads;

(b) Parking areas shall be paved or surfaced to eliminate dust or mud;

(c) Screens for an outdoor theater shall not be allowed to face the highway and shall be landscaped in such a manner as to screen them from the neighboring uses.

(7) **Fertilizer Manufacturing Plants.** Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(8) **Fraternal Organizations, Lodges, Grange Halls, and Clubs.**

(9) **Hospitals, Sanitariums, Nursing Homes and Institutions and Philanthropic and Eleemosynary Uses, Other Than Correction.**

(10) **Livestock Feeding or Sales Yards.** Such uses shall be excluded from all zones except Primary Agricultural and Industrial Zones.

(11) **Mining, Including Quarrying, Mineral Extraction, Exploration, etc., Gasification Plants, Liquidification Plants, Steam Generation Plants, and any other coal conversion facility, slurry pipe lines.** Such uses shall be specifically excluded from Residential Zones.

(12) **Mobile Home Parks.** The following minimum requirements must be met:

(a) Lot size of 10 acres with a maximum density of 10 spaces per gross acre;

(b) A greenbelt plant strip not less than 20 feet in width, shall be located along all lot lines of the park not bordering a street. Such greenbelt shall be composed of one row of deciduous and/or evergreen trees, spaced not more than 40 feet apart and not less than three rows of shrubs, spaced not more than eight feet apart and which grow to a height of five feet or more after one full growing season and which shrubs will eventually grow to a height of not less than 12 feet.

(13) **Public Buildings.** Such uses shall include governmental offices, police stations, fire stations, art galleries, museums, and libraries.

(14) **Public Utilities.** Such uses shall include public utilities and sewers or utilities operated by mutual agencies consisting of water wells, electrical substations, gas metering stations, telephone exchanges, power booster or conversion plants within the necessary buildings, apparatus or appurtenances thereto.

(15) **Radio and Television Broadcasting Stations and Transmitters.** Such uses shall be specifically excluded from Residential Zones.

(16) **Rendering of Animal Fat, Bones, Meat Scraps, etc.** Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(17) **Sanitary Land Fill.** Such uses shall be specifically excluded from Residential Zones.

(18) **Schools.** Such uses shall include private schools, kindergarten and nursery schools and institutions of higher learning. Such uses shall be specifically excluded from Industrial Zones.

(19) **Sewage Disposal or Treatment Plants.**

(20) **Slaughter Houses or Meat Packing Plants.** Such uses shall be specifically excluded from all zones except Primary Agricultural and Industrial Zones.

(21) **Trailer Park, Court, Camps.** Such uses shall be specifically excluded from Residential and Industrial Zones, and the following requirements must be met:

- (a) Access to such use shall only be from a major or secondary arterials;
- (b) All requirements of the Indian Health Service shall be fulfilled; and
- (c) All external boundaries abutting any Residential Zone shall be effectively sight screened by a view-obstructing fence or by a combination of fencing and landscaping.

§18-19-103. **Area Regulations.**

(1) **Yards.** Unless otherwise specified by the Director, the provisions for required front and side yards applicable to the particular zone in which any such use is proposed to be located shall prevail.

(2) **Height and Area Regulations.** Unless otherwise specified by the Director, the provisions for height, area requirements, and lot coverage applicable to the particular zone in which any such use is proposed to be located shall prevail.

**CHAPTER TWENTY
OFF-STREET PARKING AND LOADING**

§18-20-101. General Provisions.

At the time of the erection of a new structure or the addition to an existing structure or the use of an existing building, structure, or land use is changed, off-street parking and loading space shall be provided according to the following requirements:

<u>USE</u>	<u>PARKING SPACE REQUIRED</u>
(1) Amusement Park	1 space for each 1000 sq. ft. of patron serving area
(2) Auto courts, motels, trailer parks	1 space for each sleeping unit and/or 1 space for each trailer space
(3) Banks, business and professional offices	1 space for each 200 sq. ft. of gross area
(4) Bowling Alleys	5 spaces for each alley
(5) Churches, mortuaries, funeral homes	1 space for each 5 seats in the chapel or nave
(6) Commercial recreation facilities	1 space for each 100 sq. ft. of gross floor area
(7) Dance halls, exhibition halls, clubs and lodges, and other places of assembly without fixed seats	1 space for each 75 sq. ft. of gross floor area
(8) Dwelling, one-, two-, multiple	1 space for each dwelling unit
(9) Furniture, appliance, hardware and clothing stores, service or	1 space for each 600 sq. ft. of floor area

personnel service
shops

- (10) Golf driving range 1 space for each linear foot of driving range
- (11) Hospitals, sanitariums, convalescent homes, nursing homes and rest homes 1 space for each 5 regular beds plus 1 space for every two employees with a minimum of 2 spaces
- (12) Hotels 2 spaces for every 3 bedrooms
- (13) Libraries and museums 1 space for each 500 sq. ft. of gross area
- (14) Uses permitted in the Residential Zone 1 space for each 3 employees based on the maximum work shift
- (15) Medical and dental clinics 1 space for each 200 sq. ft. of gross floor area
- (16) Restaurants, and any establishment for sale and consumption on the premises of food or refreshments 1 space for each 100 sq. ft. of gross floor area
- (17) Retail stores, except otherwise specified:
 - (a) Having not more than 7000 sq. ft. of gross area 1 space for each 300 sq. ft. of gross floor area
 - (b) Having more than 7000 sq. ft. of gross area.

**CHAPTER TWENTY-ONE
GENERAL PROCEDURES**

§18-21-101. Representation by Advocates and Lawyers in Proceedings Before the Director and Commission.

A party to proceedings before the Director or Commission may appear on behalf of himself or through a tribal lay advocate or attorney. Such lay advocate or attorney must comply with all requirements to practice before the Tribal Court.

§18-21-102. Service and Publication in Matters Involving Lands Having More Than Five Beneficial Owners.

In matters involving a parcel of land having more than five beneficial owners, whose ownership is derived from an Indian owner or allottee, any requirements of service and publication shall be deemed to be sufficient and in good faith where notice is given to the appropriate office of the Bureau of Indian Affairs.

§18-21-103. Parties Entitled to Bring Action Under this Title to Halt Activities that Threaten Reservation Resources.

(1) Any person or other legal entity, including the Rosebud Sioux Indian Tribe, any of its political subdivisions, and the federal government, may maintain an action in Tribal Court for declaratory and equitable relief against any person or other legal entity for the protection of the air, water, land and other Reservation natural resources. This section shall not constitute a waiver of the sovereign immunity of the Rosebud Sioux Tribe or any of its subordinate entities as to any action for the protection of Reservation natural resources or land.

(2) No action may be commenced under subsection (1) of this provision unless:

(a) prior to filing his complaint, the plaintiff gives 60 days' notice of the alleged harm or degradation to each of the following: (i) the Director of Land Use and Environment (or Water Resources if the alleged harm or degradation is to Reservation waters); (ii) the Commission; (iii) the Rosebud Sioux Indian Tribe; and (iv) the alleged violator;

(b) all proceedings before the Commission are final; and

(c) no enforcement proceedings have been initiated by the Commission or by the Directors.

§18-21-104. Parties Entitled to Intervene in Proceedings Involving Potential Harm to Reservation Land or Resources.

(1) The Commission may permit any tribal member, tribal entity or any person or entity directly affected or potentially directly affected by a decision of the Commission, Directors or to intervene as a party in any proceeding before the Commission that involves conduct that might pollute, impair or degrade Reservation resources or land. To intervene, a person must file a pleading with the Commission that alleges that the proceeding involves conduct that has the effect of polluting, impairing or degrading the air, water, land or other natural resources of the Reservation. Such a pleading must be filed at least three days before the last Commission hearing conducted before the issuance of the final decision.

(2) In a proceeding for judicial review of a Commission decision, the Tribal Court may also permit such intervention upon the filing of such a pleading. In a Tribal Court proceeding, a pleading requesting intervention shall be filed with the tribal court and served upon the parties to the Tribal Court proceeding. To be timely, a request for intervention in a Tribal Court proceeding must be filed with the court and served upon all parties to the judicial proceeding within 10 days of the filing of the request for judicial review.

§18-21-105. No Recognition of Affirmative Defense of "No Reasonable Alternative".

In light of the Rosebud Sioux Indian Tribe's paramount concern for the protection of Reservation natural resources and lands from pollution, impairment or degradation and the health and welfare of Reservation residents, neither the Directors of Land Use and Environment and Water Resources, the Commission, nor the Tribal Court shall recognize the argument that there is no feasible and prudent alternative to the defendant's conduct and that such conduct is consistent with the promotion of the health of Reservation residents as an affirmative defense to any action brought to protect Reservation resources and lands from pollution, impairment or degradation.

§18-21-106. Remedies in Titles 18 and 19 Are Alternative to Remedies Under Other Tribal Law.

A purpose of Titles 18 and 19 is to provide additional and cumulative remedies to prevent, abate, and control the pollution and degradation of Reservation natural resources and land. Accordingly, this Chapter shall not be interpreted to list the only remedies for harm to Reservation natural resources and land, nor shall it be interpreted to limit or change rights or remedies for such harm available under tribal law, nor shall it be construed as preventing the Tribe, the Directors, the Commission, or any Reservation resident from exercising their rights under tribal law to suppress nuisances or to abate pollution or other degradation of Reservation natural resources or land.

§18-21-107. Procedure for Hearing Matters of General Concern to the Rosebud Reservation Community: Informal Public Hearings.

Where this Code requires or where the Commission or Directors are to act upon matters that affect the Reservation community and members of the Rosebud Sioux Tribe or where the Commission or Directors determine in their discretion that an informal public hearing is required, the Director shall:

(1) Issue a notice that includes:

(a) A statement of the time, place, and nature of the informal public proceedings;

(b) A statement of the purpose of the proposed land use;

(c) Either the specific language of the request to conduct the proposed land use or a description of the contents of the request;

(d) Whenever the language of the proposed request is not included in the notice, a statement that a copy of the proposed request is available free of charge from the Land Use and Environment Department and an explanation of how to obtain a copy; and

(e) The name of the person in the Department to whom the public may direct questions about the proposed request.

(2) Publicize such notice by:

(a) Providing it to each member of the Commission; and

(b) Posting it conspicuously at the Tribal Administration Building.

(c) In his discretion, the Director may publish the notice twice in a newspaper of general circulation on the Reservation.

(3) Schedule an informal, public hearing at which any person may express his views on the requested land use orally or in writing. The Director may set a reasonable limit on the length of time each person may speak. The public shall be permitted to file written comments up to 14 days after the public hearing is held. The Director shall schedule such meeting no sooner than 10 days nor later than 20 days after posting of the notice required by §18-21-103(2)(b).

(4) After consideration of all evidence presented to it during the informal public hearing and within 20 days of the conclusion of that hearing, the Commission or Director

shall issue its decision. Such a decision shall be made in accordance with the best interest of the Reservation community and members of the Rosebud Sioux Tribe.

(5) The decision shall be announced by:

(a) providing a copy to each member of the Tribal Council; and

(b) posting a copy conspicuously at the Tribal Administration Building.

(c) In its discretion, the decision may be publicized by being published once in a newspaper of general circulation on the Reservation.

(6) The decision after an informal hearing shall be effective immediately and shall be posted in a conspicuous place at the Tribal Administration Building.

§18-21-108. Procedure for Hearing Contested Matters: Formal Trial-Like Proceedings.

Where required by this Title, or where the Commission determines in its discretion, that a formal, trial-like proceeding be held:

(1) The Director shall provide timely notice to all interested parties of:

(a) the time, place and nature of the formal hearing; and

(b) the matters of law and fact asserted

by either personal service or by United States mail, first-class postage prepaid.

(2) The Director shall schedule a hearing to be held no sooner than 10 days and no later than 20 days after service of the notice on all parties.

(3) All interested parties shall have the opportunity to:

(a) present and cross-examine witnesses;

(b) submit facts and arguments.

(4) During the pendency of any formal trial-like proceeding, no member of the Commission or the Department, including the Director, may communicate with any person interested in the proceeding unless he gives notice to all interested parties of the communication.

(5) After consideration of all evidence presented and within 20 days of the conclusion of the hearing, the decision shall be issued. Such a decision shall be made in

accordance with the best interests of the Reservation community and members of the Rosebud Sioux Tribe.

(6) The Director shall serve a copy of the decision upon all interested parties and post a copy of the decision conspicuously at the Tribal Administration Building. The decision shall be effective upon its issuance.

§18-21-109. Procedures for Requesting Permits from the Commission or Director.

(1) To obtain a permit under this Title and Title 19, a person must file a petition with the Director requesting a permit to conduct an activity that is regulated by this Code.

(2) Such petition shall provide, at the minimum, the following information:

(a) The legal description of the property involved;

(b) The reason why the activity is required to achieve necessary and justifiable economic or social development;

(c) The overriding considerations of the public interest that would be served thereby.

(d) The reason why any proposed activity will not interfere with or be injurious to Reservation land or natural resources.

(3) Upon receipt of a petition for a permit the Director shall provide notice of such petition according to § 18-21-103(1). Such notice shall also include a statement of the purpose of the proposed activity or discharge of a pollutant.

(4) When determining whether to issue permits, the Commission shall follow the procedures for informal public hearings set forth in § 18-21-103(1), except as otherwise provided by this Title or Title 19.

(5) Any person petitioning for a permit or an extension, amendment or renewal of an existing permit, that authorizes activity that could result in a significant risk of pollution, contamination or degradation of the Reservation environment and that is not covered by a performance or damage bond or other financial assurance instrument, may be required as a condition of the permit to provide financial assurance guaranteeing the performance of corrective actions to contain, mitigate and remedy all pollution, contamination or degradation that may be caused by such activity. The financial assurance shall be in a form and in a reasonable and proper amount, all of which shall be approved by the Commission, and may include but is not limited to insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. This tribal bond requirement is in addition to any bond required by federal law pertaining to federally leased land.

(6) All right and title in any bond or other security required by the Land Use and Environment Commission shall be in the Rosebud Sioux Indian Tribe until the Commission releases the said security. The bond or other security is not an asset of the person required to provide it and may not be canceled, assigned, revoked, disbursed, replaced or allowed to terminate without the approval of the Commission.

§18-21-110. Procedure for Issuance of Notices of Violation by the Director.

(1) Whenever the Director has reason to believe that a violation of this Title or Title 19, or any rules made or permits issued under there, has occurred, he shall serve a written Notice of Violation upon the alleged violator or his agent. Where the alleged violation occurs upon federally leased lands, the Director shall also serve a copy of the Notice of Violation upon the Bureau of Indian Affairs. Such service shall be either by (i) personal service, (ii) attaching the notice conspicuously to the home, building, business, or other location where the violation has occurred, or (iii) United States mail, first-class postage prepaid, addressed to the last known address of the alleged violator. For purposes of this section, service by mail is complete upon mailing.

(2) Such Notice of Violation shall state separately each violation of this Title, the specific section of this Title has been violated, what corrective action is necessary to comply with the Title, and the reasonable time established by the Director for compliance, which shall in no event be sooner than 20 days from the date of service.

(3) When calculating a reasonable time for compliance, the Director shall take into consideration:

- (a) the type and degree of violation;
- (b) the threat to public health and the environment posed by the violation;
- (c) the difficulty of compliance and the financial and material means of the alleged violator;
- (d) the expressed intent and past record of compliance of the alleged violator.

An extension of time for compliance may be granted by the Director, but only upon a showing that the corrective actions required by the Director have been commenced and that the work is progressing at a satisfactory rate.

(4) The alleged violator may request a hearing before the Commission to be conducted in accordance with the procedures set forth in § 18-21-104, below, to answer the charges made against him. Such a request must be filed with the Commission and served upon the Director within five days of service of the Notice of Violation. A request for a hearing shall not affect the time for compliance stated in the Notice of Violation.

(5) If a contested hearing is requested pursuant to subsection (5) above, the Commission shall hold a contested hearing pursuant to § 18-21-104 within 10 days of service of the notice required by subsection (1), above. A hearing shall not stay the running of the time for compliance established pursuant to § 19-5-103(3), above. The Director shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred.

(6) The Commission shall issue an order confirming the Notice of Violation within five days after conclusion of the hearing, if the Director proves a violation. The order shall be effective upon its issuance and shall be served by United States mail, first-class postage prepaid, upon the alleged violator and the Director.

(7) If no hearing is requested pursuant to subsection (5) above, the Notice of Violation shall be effective 20 days from the date of service upon the alleged violator.

§18-21-111. Procedure for Revocation of Permits by the Commission.

(1) The Commission may revoke, modify or suspend, in whole or in part, any permit issued pursuant to this Title or Title 19. Such a revocation, modification or suspension must be for cause, which may include but is not limited to a violation of any permit conditions, obtaining a permit by misrepresentation or failure to disclose any relevant facts, or changes in conditions that require revocation, modification or suspension of the permit so as to preserve the quality of Reservation resources.

(2) The Commission shall give 30 days' written notice of its intention to revoke, modify or suspend a permit to the holder of the permit and the Director. The date of the notice shall be the date it is issued by the Commission. Such notice shall state the basis for the Commission's proposed action and shall be delivered to the permit holder by personal service or by United States mail, first-class postage prepaid. If the Commission intends to revoke a permit issued pursuant to Chapter Six of Title 19, it shall also serve a copy of such notice upon the United States Environmental Protection Agency.

(3) Within 30 days of receipt of the notice required by subsection (2) above, the holder of the permit may request a contested hearing pursuant to § 18-21-104. Such a hearing shall be held within 30 days of service upon the Commission of such request, and the Director shall prove, by a preponderance of the evidence, why the permit should be revoked, modified or suspended. A request for a hearing does not stay the revocation, modification or suspension of the permit. The Commission's decision shall be issued within 30 days of conclusion of the hearing, and shall be served by United States mail, first-class postage prepaid, upon the permit holder and the Director.

(4) Revocation, modification or suspension of a permit shall be effective upon the date indicated in the notice required by subsection (2) above.

(5) The Commission's final order revoking, modifying, or suspending any permit shall be publicized pursuant to § 19-5-105(5). If the Commission revokes a permit issued

pursuant to Chapter Six of this Title, it shall serve a copy of its revocation order upon the United States Environmental Protection Agency as well.

§18-21-112. Procedure for Issuance of Emergency Orders or Permits by the Director.

(1) No person may, in violation of this Title or Title 19 or any rule or permit issued under it, commit an act that will cause substantial harm or pollution to Reservation resources or land, the harmful effects of which cannot be remedied immediately after the commission or cessation of the act. The Director may issue an emergency order requiring the person to stop, avoid, or moderate the act or an emergency permit allowing certain regulated activity so that the substantial injury will not occur. Such an order or permit is effective immediately upon receipt by the person to whom it is directed. If the emergency order is not complied with in a timely manner or if the emergency permit does not limit or prevent the harm, the Director may take reasonable action to prevent such harm, including making efforts to contain and recover pollutants to limit or prevent pollution of any Reservation resources.

(2) Notice of an emergency order or permit shall be given in accordance with § 18-21-103(1), so far as is possible given the nature of the emergency. Such a notice shall state that the order or permit is issued for emergency purposes.

(3) Upon issuing an emergency order or permit pursuant to subsection (1) above, the Director shall set a place and a time for a hearing no more than five days after issuance of the order. The hearing shall be conducted as a contested hearing pursuant to § 18-21-104. At such hearing, the Commission shall either confirm or reject the Director's issuance of such order.

(4) The Commission's decision is reviewable by the Tribal Court pursuant to § 18-21-115; however, a request for such review shall not stay the effectiveness of the order.

§18-21-113. Procedure for Appeal of Decisions Made by the Director.

(1) Within 30 days of the issuance any decision under this Title or the issuance of any other order by the Director, such as an order to comply or an order assessing civil penalties, any person adversely affected by the order may appeal to the Commission. However, the Commission shall have no jurisdiction to hear such an appeal unless the person seeking the appeal has previously exhausted all of their available remedies before the Director.

(2) An appeal shall be instituted by the delivery, no later than 30 days after the date of the order appealed from, of a notice of appeal to the office of the Commission and to the offices of the Directors. The notice shall state the appellant's name and address, the order appealed from, and the general grounds of the appeal.

(3) In any appeal, the Commission may adopt such procedures and set such schedules as are appropriate for the circumstances, including informal hearings or formal trial-like proceedings, on the conditions that any appellant may demand and shall be granted the right to formal trial-like hearings in its notice of appeal and that, in any appeal, the Commission shall hold an informal hearing at which the appellant, and any other interested person, may appear to present his position on the appeal.

(4) The hearing on an appeal shall be held no later than 30 days after the notice of appeal is filed, unless the Commission grants a request for extension for good cause.

(5) The Commission shall issue its decision on the appeal no later than 30 days after conclusion of the hearing.

§18-21-114. Procedure for Appeal of Decisions Made by the Commission.

Any person adversely affected by a decision of the Land Use and Environment Commission may appeal the decision to the Tribal Court within 30 days of the Commission's decision. However, the Tribal Court shall have no jurisdiction over such an appeal unless the person seeking the appeal has previously exhausted all of their available remedies before the Directors and the Commission. In any such an appeals proceeding, the decision of the Commission shall be upheld unless the court shall find that the Commission's decision:

(1) Violates this Title or Title 19 or any other law or custom of the Rosebud Sioux Tribe;

(2) Was arbitrary, capricious or an abuse of discretion; or

(3) Was made without observance of procedure required by law or custom of the Rosebud Sioux Tribe.

§18-21-115. Initiation of Appeal to Tribal Court.

(1) **Final Action Appealable.** Any party to any proceeding heard by the Commission who is aggrieved by the decision or by the entry of any final order or decision of the Commission is entitled to judicial review thereof in the Tribal Court. Neither a preliminary, procedural, or intermediate Commission action nor any action of the Director, is subject to review in the Tribal Court.

(2) **Time For Appeal.** An appeal shall be initiated by filing with the Tribal Court, within 20 days of the decision appealed from, a Notice of Appeal.

(3) **Form of Notice.** The Notice of Appeal will contain:

(a) the appellant's name and address;

- (b) the nature of the decision appealed from;
- (c) the general location and the legal description of the property involved; and
- (d) a brief statement of the grounds for appeal.

§18-21-116. Limited Waiver of Sovereign Immunity for Tribal Court Review.

(1) The Tribe hereby waives the sovereign immunity of the Commission, its members, and the Directors for the limited purpose of Tribal Court review of decisions of the Directors or Commission. Such waiver of immunity is further limited to prospective, equitable relief, including declaratory and injunctive relief, and does not include money damages of any kind. Any such action in the Tribal Court shall not be dismissed nor relief be denied on the ground that it is against the Tribe or that the Tribe is an indispensable party.

(2) Nothing herein either affects other limitations on judicial review or the power or duty of the Tribal Court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or confers authority to grant relief if any other tribal law that grants consent to suit expressly or impliedly forbids the relief which is sought.

§18-21-117. Relief Pending Review.

Whenever the Tribal Court finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required, and to the extent necessary, to prevent irreparable injury, the Tribal Court may issue all necessary and appropriate process to postpone the effective date of a Commission action or to preserve the status quo or rights pending conclusion of the review proceedings.

§18-21-118. Scope of Review; Relief Available.

To the extent necessary to make its decision and when presented, the Tribal Court shall decide all relevant questions of law, interpret constitutional provisions and all other tribal law, and determine the meaning or applicability of the terms of the Commission's action. The Tribal Court may:

- (1) compel Commission action unlawfully withheld or unreasonably delayed;
- (2) hold unlawful and set aside Commission action, findings, and conclusions found to be:
 - (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

(b) contrary to any right, power, privilege, or immunity accorded by the Tribal Constitution or the Indian Civil Rights Act, 25 U.S.C. § 1301, *et seq.*;

(c) in excess of jurisdiction, authority, or limitations granted by tribal law;

(d) without observance of procedure required by law; or

(e) in an adjudicatory proceeding only, unsupported by substantial evidence.

In making the foregoing determinations, the Tribal Court shall review the whole record before the Commission or those parts of it cited by any party.

§18-21-119. Appeal to Tribal Appellate Court.

Any party to an appeal to the Tribal Court who is aggrieved by the judgment in the Tribal Court upon judicial review of a final order or decision of the Commission, may prosecute an appeal to the Tribal Appellate Court under the provisions of this Code.

§18-21-120. Scope of Review in Tribal Appellate Court; Relief Available.

The scope of review and relief available in the Tribal Appellate Court shall be identical to that provided for in the Tribal Court by §18-26-104.

CHAPTER TWENTY-TWO
SPECIFIC PROCEDURE FOR OBTAINING ZONING CHANGES

§18-22-101. Initiation of Zoning Change.

- (1) **Who May Seek a Variance.** A proposed zoning change may be initiated by:
- (a) petition to the Commission by any interested person or by the Director;
 - (b) action of the Commission upon its own motion; or
 - (c) action by the Council.

(2) **Petition Requirements.** A petition for a zoning change shall provide, at the minimum, the following information:

- (a) legal description of the property to be rezoned;
- (b) names and last known addresses of the owners of all property lying within a distance of 500 feet (streets and alleys included) of the property proposed for rezoning; and
- (c) a description of the proposed zoning change and an explanation of the grounds for the rezone.

§18-22-102. Notice and Hearing on Proposed Zoning Change.

Upon receipt of a petition for a zoning change, the Commission shall give notice and conduct an informal, public hearing pursuant to §18-21-103.

§18-22-103. Publication of Decision; Effective Date.

(1) After hearing on the petition, the Commission shall announce its decision on the proposal by:

- (a) providing a copy of its decision to each member of the Council;
- (b) publishing its decision once in a newspaper of general circulation on the Reservation; and
- (c) posting a copy of its decision conspicuously at the Tribal Administration Building.

(2) Notwithstanding any provision to the contrary, the final zoning change as published by the Commission shall be effective and shall be noted on the appropriate

Official Zoning Map 45 days after the Commission's decision is announced, unless before that date, the Council acts to amend or reverse the Commission's decision.

§18-22-104. Council Retention of Authority.

Notwithstanding any other provision of this Title, the Council may at any time amend this Title and any Official Zoning Map in the same manner in which the Council exercises its other lawmaking functions.

CHAPTER TWENTY-THREE
SPECIFIC PROCEDURE FOR OBTAINING VARIANCES

§18-23-101. Initiation of Variance Procedure; Petition Required.

(1) **Who May Seek a Variance.** To seek a variance, the applicant must submit a written petition to the Commission. A petition may be filed by one or more of the following entities or persons:

- (a) The owner of the property;
- (b) Whenever the property is held in trust, the beneficial owner;
- (c) A purchaser of the property under a duly executed written contract, with the written consent of the seller;
- (d) A lessee of property, with the written consent of the owner; or
- (e) The duly authorized agent of any of the foregoing;
- (f) Any tribal governmental official acting in his official capacity; and
- (g) Any person whose interests are or would be adversely affected by the uses of the land allowed under this Title if not altered.

(2) **Petition Requirements.** A petition for a variance must contain, at a minimum, the following information:

- (a) The name and address of the property owner and, if different, the applicant;
- (b) The legal description of the property;
- (c) The nature of the variance sought;
- (d) The names and last known addresses of owners of property within 500 feet of the property proposed for variance and proof that notice of the application has been provided to those persons by the applicant; and
- (e) The grounds upon which the variance is sought, responding to each condition that must be met for a variance, set out in §18-23-103 of this Chapter.

§18-23-102. Notice; Hearing.

Notice shall be given and the Commission shall conduct an informal public hearing on the petition in accordance with §18-21-103.

§18-23-103. Standard for Grant of Variance.

(1) A variance may be granted only if the Commission finds, and documents in writing its findings and their bases, that:

(a) there are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this Title;

(b) there are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or uses referred to in the petition, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land, uses or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

(c) granting the petition will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises;

(d) such variance is necessary for the preservation and enjoyment of the substantial property rights of the petitioner;

(e) granting the petition will not adversely affect the health or safety of persons working or residing in the neighborhood of the property of the applicant or of the Reservation community; and

(f) granting of the petition will be in general harmony with the intent and purpose of this Title.

However, the Commission shall grant no variance to allow the use of property for a purpose not authorized as a permitted or conditional use within the zone in which the proposed use would be located. That is, the Commission may not grant a variance to allow a use that would be a special or forbidden use within that zone. In granting a variance, the Commission may attach conditions necessary to protect the best interests of the surrounding property and the Reservation as a whole and to achieve the purposes of this Title.

§18-23-104. Effective Date of Variance; Publication.

(1) A variance shall become effective 10 days after the date of the Commission's decision.

(2) Notwithstanding §18-21-103; the Commission's decision to grant or deny a variance shall be served upon the applicant and the Director by first-class mail, postage prepaid. The Commission shall also post its decision conspicuously in the Tribal Administration Building. In addition, the Commission, in its discretion, may publicize its decision in a newspaper of general circulation on the Reservation.

§18-23-105. Term of Variance.

(1) **Variance Right Must be Exercised to be Effective.** A variance granted under this Title shall be effective only when the exercise of the right granted thereunder shall be commenced within six months from the effective date of the grant, unless a longer period be specified or thereafter allowed by the Director or Commission. In case such right has not been exercised, or extension obtained, the variance shall be void. A written request for an extension of time filed with the Director at least 30 days prior to the expiration of the variance shall extend the running of the six month period until the Director has acted on such request.

(2) **Cessation of Variance.** Discontinuance of the exercise of any right authorized by any variance for a continuous period of six months shall be deemed an abandonment of such variance, and the property affected thereby shall be subject to all the provisions and regulations of this Title applicable to the zone in which such property is located at the time of such abandonment.

(3) **Transfer of Variance.** Any valid variance granted pursuant to this Title is transferrable unless otherwise provided at the time of the granting of such variance.

CHAPTER TWENTY-FOUR
SPECIFIC PROCEDURES FOR OBTAINING BUILDING, CONDITIONAL USE,
SPECIAL USE, AND LAND DIVISION PERMITS;
PROCEDURE FOR REVOCATION OF PERMITS

§18-24-101. **General Provisions: Petition Required for Permit; Informal Hearing Procedures; Tribal Bond Optional.**

(1) **Activities Not Requiring Permits.** Any land use permitted outright in any zone, but not including the construction of buildings or structures, may be conducted without seeking a land-use permit, if the land use is conducted in accordance with the provisions of this Title.

(2) **Activities Requiring Permits.** No person may build, locate, establish, move or otherwise alter a structure or conduct a conditional or special use or divide land without a permit issued pursuant to this Chapter.

(3) **Informal Hearing Procedure to be Followed.** With the exception of building and conditional use permits, when determining whether to issue permits under this Chapter, the Director and Commission shall follow the procedures for informal public hearings set forth in §18-21-103.

(4) **Tribal Bond May be Required in Director's Discretion.** Any person petitioning for a permit, or an extension, amendment or renewal of an existing permit, that authorizes a land use that could result in significant harm or damage to the Reservation community, the Tribe or its members and that is not covered by a performance or damage bond or other financial assurance instrument may be required as a condition of the permit to provide financial assurance guaranteeing the performance of corrective actions to contain, mitigate and remedy all pollution, contamination or degradation that may be caused by such activity. The financial assurance shall be in a form and in a reasonable and proper amount, all of which shall be approved by the Director, and may include but is not limited to insurance, company net worth considerations, a surety bond, escrow account, letter of credit, trust, guarantee, or cash deposit. This tribal bond requirement is in addition to any bond required by federal law pertaining to federally leased land.

(5) **Title of Security to be in Tribe.** All right and title in any bond or other security required by the Land Use and Environment Commission shall be in the Rosebud Sioux Indian Tribe until the Commission releases the said security. The bond or other security is not an asset of the person required to provide it and may not be canceled, assigned, revoked, disbursed, replaced or allowed to terminate without the approval of the Commission.

§18-24-102. Procedure for Obtaining Building Permits.

(1) **Petition Requirements.** A petition for a building permit shall provide, at the minimum, the legal description of the property involved and a description of the building activity for which the permit is sought.

(2) **No Notice or Hearing Required.** Within 10 days of receipt of a proper petition for a building permit, the Director shall grant such a permit if the proposed structure conforms to the requirements of this Title and other tribal law. If the Director fails to act upon the application within the 10-day period, the permit shall be deemed to be granted. No hearing shall be required.

(3) **Effective Date; Publication.** A building permit shall be effective upon its issuance. Upon issuance, all building permits shall be conspicuously posted in the Tribal Administration Building for at least one month after the date of issuance.

(4) **Expiration of Building Permits.** If the work or use described in any permit has not been substantially completed within two years of the date of issuance thereof such permit shall expire. Further work as described in the canceled permit shall not proceed unless and until the Director issues a new permit.

§18-24-103. Procedure for Obtaining Conditional Use Permits.

(5) **Petition Requirements.** No person shall engage in any land use that may be conducted only as a conditional use within a zone without first obtaining a conditional use permit from the Director. A petition for a conditional use permit shall contain, at a minimum, the following information:

(a) The legal description of the land involved;

(b) Names or names of the owner and all other persons with any legal or beneficial interest in the land;

(c) Description of the current land use and all existing building or structures;

(d) Description of the land use proposed, including plans of any buildings, roads, structures, or land or vegetation disturbing activities proposed;

(e) The petitioner's explanation of how the conditional use conforms to the requirements of this Title; and

(f) Such additional information as the Director may require at the time of petition or thereafter as may be necessary to determine conformance with this Chapter.

(6) **No Notice or Hearing Required.** No notice or hearing is required for the issuance of a conditional use permit.

(7) **Standards for Decision.** The Director shall grant, deny, or grant with conditions any petition for a conditional use permit within 10th days of receipt of the application. If the Director fails to act upon the application within the 10-day period, the permit shall be deemed to be granted. The Director shall issue such permits only if he determines, upon the face of the application, that the use will conform to the requirements of this Title and such other tribal laws which the Council may hereafter assign to the Director to enforce.

(8) **Effective Date; Publication.** A conditional use permit is effective upon its issuance and may be acted upon immediately. The Director shall publicize the grant or denial of a conditional use permit by posting a notice of his decision in a conspicuous place in the Tribal Administration Building.

§18-24-105. Procedure for Obtaining Special Use Permits from the Commission.

(1) **Who May Obtain a Special Use Permit; Petition Required.** To seek a special use permit, a person must submit a written petition to the Director. An application may be filed by one or more of the following entities or persons:

- (a) The owner of the property;
- (b) Whenever the property is held in trust, the beneficial owner;
- (c) A purchaser of the property under a duly executed written contract, with the written consent of the seller;
- (d) A lessee of property, with the written consent of the owner; or
- (e) The duly authorized agent of any of the foregoing;
- (f) Any tribal governmental official acting in his official capacity; and
- (g) Any person whose interests are or would be adversely affected by the uses of the land allowed under this Title if not altered.

(2) **Petition Requirements.** A petition for a special use permit must contain:

- (a) The name and address of the property owner and, if different, the applicant;
- (b) The legal description of the property;
- (c) A description of the proposed special use sought and an explanation of the grounds for the special use permit sought; and
- (d) The names and last known addresses of owners of property within 500 feet of the property proposed for variance and proof that notice of the application has been provided to those persons by the applicant.

(3) **Notice; Informal Hearing Procedure.** The Commission shall consider petitions for special use permits in accordance with the procedures set forth in §18-21-103.

(4) **Standards for Granting Special Use Permit.** The Commission may grant a petition for a special use permit only if it finds, and documents in writing its findings and their bases, that:

- (a) there are unnecessary, unreasonable hardships or practical difficulties that can be relieved only by issuing the special use permit;

(b) there are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or special uses referred to in the petition, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land, uses or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

(c) issuing the permit will not be materially detrimental to the welfare of the Reservation community or be injurious to property or improvements in the neighborhood of the premises;

(d) such special use permit is necessary for the preservation and enjoyment of the substantial property rights of the petitioner;

(e) issuing the permit will not adversely affect the health or safety of persons working or residing in the neighborhood of the property of the petitioner or of the Reservation community;

(f) issuing the permit will be in general harmony with the intent and purpose of this Title;

(g) the present and future needs of the Reservation community will be served by the proposed activity and that, on the whole, the community will be benefitted more than impaired by issuance of the permit; and

(h) conditions shall be imposed to provide the greatest protection for existing, expected, and permitted uses in the surrounding area.

(5) **Effective Date.** A special use permit shall become effective 10 days after the date of the Commission's decision.

(6) **Publication.** Notwithstanding §18-21-103, the Commission's decision to grant or deny a special use permit shall be served upon the applicant and the Director by first-class mail, postage prepaid. The Commission shall also post its decision conspicuously in the Tribal Administration Building. In addition, the Commission, in its discretion, may publicize its decision in a newspaper of general circulation on the Reservation.

(7) **Special Use Permit Right Must Be Exercised To Be Effective.** A special use permit granted under this Title shall be effective only when the exercise of the right granted thereunder shall be commenced within six months from the effective date of the grant, unless a longer period be specified or thereafter allowed by the Director or Commission. In case such right has not been exercised, or extension obtained, the special use permit shall be void. A written request for an extension of time filed with the Director at least 30 days prior to the expiration of the special use permit shall extend the running of the six month period until the Director has acted on such request.

(8) **Cessation of Special Use Permit.** Discontinuance of the exercise of any right authorized by any special use permit for a continuous period of six months shall be deemed an abandonment of such special use permit, and the property affected thereby shall be subject to all the provisions and regulations of this Title applicable to the zone in which such property is located at the time of such abandonment.

(9) **Transfer of Special Use Permit.** Any valid special use permit granted pursuant to this Title is transferrable unless otherwise provided at the time of the granting of such special use permit.

§18-24-106. **Specific Procedure for Obtaining Land Division Permits.**

(1) No person or entity owning or controlling property may subdivide or otherwise create two or more parcels of property from one, without first obtaining a permit under this Chapter.

(2) **Petition Requirements.** A permit petition shall contain, at a minimum, the following information:

(a) The legal description of the land involved;

(b) The name of the owner and all other persons with any legal or beneficial interest in the land;

(c) A description of the land division proposed;

(d) Proof that the applicant has provided notice in writing to all owners of property within 500 feet of the subject property; and

(e) Such additional information as the Director may require at the time of application or thereafter as may be necessary to determine conformance with this Title.

(3) **Notice; Informal Hearing.** The Director shall give notice and conduct an informal hearing pursuant to §18-21-103.

(4) **Standards for Decision.** Within 10 days of the hearing on the land division permit application, the Commission shall grant, deny, or grant the application with appropriate conditions or restrictions. The Commission shall deny a land division application only if it would violate a relevant section of this Chapter.

(5) **Effective Date; Publication.** The Commission shall publicize the grant or denial of a land division permit by posting its decision in a conspicuous place in the Tribal Administration Building. The Commission's decision is effective and may be acted upon 20 days after the date of the decision.

§18-24-107. Procedure for Revocation of Permits by the Director.

(1) The Director may revoke, modify or suspend, in whole or in part, any permit issued pursuant to this Chapter. Such a revocation, modification or suspension must be for cause, which may include but is not limited to a violation of any permit conditions, obtaining a permit by misrepresentation or failure to disclose any relevant facts, or changes in conditions that require revocation, modification or suspension of the permit so as to preserve the quality of Reservation land and other resources.

(2) Revocation, modification or suspension of a permit shall be effective upon the date indicated in the notice required by §18-24-107(2).

(3) The Director shall give 30 days' written notice of his intention to revoke, modify or suspend a permit to the holder of the permit. Such notice shall state the basis for the Director's proposed action and shall be delivered to the permit holder by personal service or by United States mail, first-class postage prepaid.

(4) Within 10 days of the date of the notice required by §18-24-107(2) above, the Director shall conduct a formal, contested hearing pursuant to §18-21-104. The date of the notice is the date it is issued by the Director. The Director shall prove, by a preponderance of the evidence, why the permit should be revoked, modified or suspended. The effective date of the revocation is not stayed pending hearing on the revocation. The Director's decision shall be issued within 10 days of conclusion of the hearing and shall be served by United States mail, first-class postage prepaid, upon the permit holder and any other interested party.

CHAPTER TWENTY-FIVE ENFORCEMENT

§18-25-101. Initiation of Enforcement By Director.

(1) **Determination of Violation; Notice.** Whenever the Director determines has reason to believe that violations of any part of this Title exist, he shall serve upon the owner, lessor, tenant, resident, operator, or other person believed to be responsible for such violation a notice of violation. The written notice shall be served by personal service, or by notice attached conspicuously to the home, building, business, or other location of the violation, or by United States mail addressed to the last known address of the person, tenant, occupant, operator or other party believed to be responsible for the violation. In the case of property leased under a federally approved lease, a copy of the written notice shall be served upon the Bureau of Indian Affairs by United States mail, first-class postage prepaid.

(2) **Contents of Notice.** The notice shall state separately each violation of this Title, what corrective action is necessary to comply with the Title, and the reasonable time established by the Director for compliance. In particular, the Director may order discontinuance of any activity violating this Title and indicate what actions are necessary to bring a violating use or structure into compliance.

(3) **Time for Compliance.** When calculating a reasonable time for compliance, the Director shall take into consideration:

- (a) the type and degree of violation;
- (b) the threat to public health and the environment posed by the violation;
- (c) the difficulty of compliance and the financial and material means of the violator; and
- (d) the expressed intent and past record of compliance of the responsible party.

An extension of time for compliance may be granted by the Director only upon a showing that required actions have been commenced and that the work is progressing at a satisfactory rate.

§18-25-102. Assessment of Civil Penalty.

(1) **Determination and Recommendation of Civil Penalty.** In addition to any other sanction or remedy available under this Title, the Director may, after investigation of the alleged violation, determine a civil penalty for the violation and recommend to the Commission its assessment against the violator. The penalty shall not exceed \$250.00 for

each day the violation existed prior to the service of a notice of violation and \$500.00 a day for each day thereafter.

(2) **Notice of Civil Penalty; Filing With Commission.** The Director shall serve a Notice of Civil Penalty by personal service or by United States mail addressed to the last known address of the person the Director deems responsible for the violation and shall file the notice with the Commission. The notice shall explain the nature of the violation, the basis of the amount of civil penalty assessed, that the penalty constitutes a recommendation to the Commission and may be assessed by the Commission only after hearing as provided herein.

(3) **Notice of Penalty Hearing.** Upon receipt of a Notice of Civil Penalty, the Commission shall serve notice of a penalty hearing upon the alleged violator in the manner provided in this Code for service of summons and complaint in the Tribal Court and shall schedule the penalty hearing not sooner than 20 days nor later than 45 days after such service.

(4) **Hearing Before Commission.** At the penalty hearing the alleged violator may express his views orally or in writing, and may present witnesses and evidence in his behalf, but shall not be entitled to a continuance unless he posts bond with satisfactory sureties or cash in the amount of any civil penalty assessed by the Commission.

(5) **Action By The Commission.** The Commission shall accept, reject or modify the Director's recommended civil penalty, as it deems fair and just, and may assess the civil penalty against the violator and may provide a time for payment. The Commission may require, in its discretion, payment to be paid in one lump sum within no less than 30 days or to be paid in installments over not more than 24 months.

(6) **Action to Recover Penalty.** If the violator fails to make payment within the specified time, or, if an installment payment program is directed and the violator fails to meet any of the scheduled payments, the Director may commence an action to recovery the unpaid penalty amounts in the Tribal Court.

§18-25-103. Additional Relief.

The Director may also seek other relief from the Tribal Court to enforce any orders he issues under this Title, or to enjoin any action or practice, or to abate any condition which constitutes or will constitute a violation of this Title.

§18-25-104. Purpose of Civil Penalties.

The civil fines imposed under this Chapter are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Title. The civil fines under this

Chapter are also intended to coerce all persons into complying with this Title, Commission regulations and the laws and regulations of the Tribe and not to punish such persons for violation of such laws and regulations.

§18-25-105. Criminal Enforcement.

In addition to the civil penalties provided for in §18-25-102, any Indian who violates or fails to comply with this Title shall, upon conviction in the Tribal Court, be punished by a fine of no more than \$1,000. In lieu of fine, any such person found guilty of violating this Title may be required by the Court to provide not more than 30 days of community service assisting in activities useful to the protection or enhancement of the Reservation environment. Each day of violation shall be considered a separate violation of this Title.