

TITLE 19 - LAND

CHAPTER 1 - AGRICULTURAL AND RANGE TRESPASS

Legislative History: The "Tohono O'odham Agricultural and Range Resource Management Trespass Ordinance," Ordinance No. 03-01, was enacted by Resolution No. 03-111 on March 5, 2003.

**TOHONO O'ODHAM
AGRICULTURAL AND RANGE RESOURCE MANAGEMENT
TRESPASS ORDINANCE**

Sec. 100 – Definitions.

- a. "AIARMA" means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), and amended on November 2, 1994 (108 Stat. 4572).
- b. "District Council" means the governing body of one of the eleven districts of the Nation as provided in Article IX of the Nation's Constitution.
- c. "Farmland" means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.
- d. "Indian agricultural land" means Indian land, including farmland and rangeland, excluding Indian forest land, that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.
- e. "Indian forest land" means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.
- f. "Indian land" means the tribal trust lands of the Nation and any tract in which any interest in the surface estate is owned by the Nation in fee, or an individual Indian in trust or restricted status, and includes individually-owned Indian land.
- g. "Indian landowner" means the Nation or an individual Indian who owns an interest in Indian land in trust or restricted status.
- h. "Individually-owned Indian land" means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.
- i. "Nation" means the Tohono O'odham Nation.

- j. "Rangeland" means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.
- k. "Trespass" means any unauthorized occupancy, use of, or action on Indian agricultural lands, including farmland and rangeland.
- l. "Tribal land" means the surface estate of land or any interest therein held by the United States in trust for the Nation, and land that is held by the Nation, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).
- m. "Trust land" means any tract, or interest therein, that the United States holds in trust status for the benefit of the Nation or individual Indian.
- n. "Unauthorized livestock" means livestock found on an open range within the Nation that is not authorized by the Nation, Livestock Associations or roundup bosses to graze the range where the livestock is found.

Sec. 101 – Policy and Purpose.

The Tohono O'odham Nation will:

- (a) Investigate accidental, willful, and/or incidental trespass on Indian agricultural land;
- (b) Respond to alleged trespass in a prompt, efficient manner;
- (c) Enjoin or otherwise halt an on-going trespass pending enforcement and disposition in accordance with the provisions of this Ordinance;
- (d) Seize and impound unauthorized livestock;
- (e) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass; and
- (f) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

Sec. 102 – Enforcement.

(a) The Nation's Realty Office enforces the provisions of this Ordinance unless otherwise provided herein. In accordance with AIARMA, the Nation has concurrent jurisdiction with the BIA to enforce the provisions of Subpart I of Part 166 of Title 25 of the Code of Federal Regulations. Pursuant to AIARMA and 25 C.F.R. § 166.802(a), the BIA defers to the Nation's prosecution of trespass on Indian agricultural lands within the Tohono O'odham Nation.

(b) Nothing in this Ordinance shall be construed to diminish the sovereign authority of the Nation with respect to trespass.

*Notification***Sec. 103 – Notification of a trespass determination.**

(a) When the Nation's Realty Office has reason to believe that a trespass on Indian agricultural land within the Nation has occurred, within five business days, the Nation's Realty Office will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

- (1) The basis for the trespass determination;
- (2) A legal description of where the trespass occurred;
- (3) A verification of ownership of unauthorized property, which, for cases of livestock trespass, shall include a certification from the Nation's Livestock Inspector of brand ownership, if applicable, and may include verification of brands in the State Brand Book;
- (4) Corrective actions that must be taken;
- (5) Time frames for taking the corrective actions;
- (6) Potential consequences and penalties for failure to take corrective action;
- (7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by the Nation's Realty Office; and
- (8) A statement that a written response to the notice of trespass must be submitted to, and received by, the Nation's Realty Office within five business days of the receipt of the notice of trespass.

(b) If the Nation's Realty Office determines that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the office of the District Council nearest to the Indian agricultural lands where the trespass is occurring, the U.S. Post Office in Sells, Arizona, and published in a local newspaper near the Indian agricultural lands where the trespass is occurring. A public trespass notice shall contain the information enumerated in subsections (a)(1),(2),(4)-(8) of this Section. A public

trespass notice is considered received five business days following the last event of posting or publishing the public trespass notice as provided in this subsection.

Sec. 104 – Response to a written trespass notice.

(a) The recipient of a written notice pursuant to Section 103(a) shall either: (i) comply with the ordered corrective actions; or (ii) within five business days of receipt of a written notice, contact the Nation's Realty Office in writing to explain why the trespass notice is in error. Any explanation of trespass must be in writing and may be supported by any additional written information the Nation's Realty Office should consider.

(b) The Nation's Realty Office shall consider any written response from the recipient of a written notice, or in response to a public trespass notice, which is submitted within the time provided in Section 103, and the Nation's Realty Office may modify or amend the written notice of trespass with respect to corrective actions that must be taken, time frames for taking the corrective actions, and potential consequences and penalties for failure to take corrective action. A modified or amended written notice of trespass shall constitute final action of the Nation's Realty Office with respect to the trespass notice.

(c) If the Nation's Realty Office determines that it issued the trespass notice in error, the Nation's Realty Office will withdraw the notice.

(d) If the Nation's Realty Office receives no written response within the time provided in Section 103, the written notice of trespass, or public trespass notice, issued pursuant to Section 103 constitutes final action of the Nation's Realty Office with respect to the written notice of trespass.

Sec. 105 – Duration of a written trespass notice.

A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

Actions

Sec. 106 – Actions against trespassers.

If the trespasser fails to take the corrective action specified by the Nation's Realty Office, then the Nation's Realty Office may take one or more of the following actions pursuant to the provisions of this Ordinance, as appropriate:

- (a) Sell or dispose of unauthorized livestock or other property involved in the trespass. The Nation's Realty Office may keep seized property for use as evidence.
- (b) Assess penalties, damages, and costs, under Section 112 of this Ordinance.
- (c) Enjoin or otherwise halt an on-going trespass pending enforcement and disposition in accordance with the provisions of this Ordinance

Sec. 107 – Impounding unauthorized livestock or other property.

(a) Unauthorized livestock will be impounded. The Nation's Livestock Inspector is authorized to impound at the Livestock Complex in Sells, unauthorized livestock. Upon impounding unauthorized livestock, the Nation's Livestock Inspector shall notify the Nation's Realty Office. The Nation's Realty Office shall provide the notice required in Section 108. The Nation's expense of feeding and caring for the impounded livestock shall be a cost charged to the owner of the unauthorized livestock, as provided in Section 112(d).

(b) The Nation's Realty Office will impound other unauthorized property determined to be a trespass upon the Indian agricultural lands within the Nation under the following conditions: (i) where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage; or (ii) when the known owner or the owner's representative of the property refuses to remove the property or otherwise fails to correct the trespass within five days of the date on which the Nation's Realty Office provides notice of impoundment pursuant to Section 108(c).

Sec. 108 – Notification of impounding unauthorized livestock or other property.

(a) The Nation's Realty Office will notify the owner of the unauthorized livestock in writing if the owner is known that the livestock has been impounded. The notice shall provide that the impounded livestock will be sold unless the impounded livestock is redeemed prior to its sale.

(b) If the Nation's Realty Office determines that the owner of the unauthorized livestock is unknown, the Nation's Realty Office will post a public notice of intent to sell the impounded livestock at the office of the District Council nearest to the Indian agricultural lands where the unauthorized livestock was located, and at the Nation's Livestock Center in Sells, Arizona, and will publish the notice of intent to sell the impounded livestock in a local newspaper near the Indian agricultural lands where the unauthorized livestock was located.

(c) If the trespass by other property is not corrected in the time specified in the initial written trespass notice, the Nation's Realty Office will send written notice of intent to impound the property to the property owner or representative, and any known lien holder of the property.

(d) If the Nation's Realty Office determines that the owner of the property or the owner's representative is unknown or refuses delivery of the written notice, the Nation's Realty Office will: (i) post a public notice of intent to impound the property at the office of the District Council nearest to the Indian agricultural lands where the trespass is occurring, and in the U.S. Post Office in Sells, Arizona; (ii) publish a public notice of intent to impound the property in a local newspaper near the Indian agricultural lands where the trespass is occurring; and (iii) impound the property.

Sec. 109 – Notification of intent to sell impounded livestock and other property.

(a) The Nation's Realty Office will provide written notice of the sale of the impounded unauthorized livestock or other property to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure set forth in Section 110 by which the impounded property may be redeemed prior to the sale.

(b) The Nation's Realty Office will also provide public notice of the sale of impounded property by: (i) posting a notice of sale at the office of the District Council nearest to the Indian agricultural lands where the property was located, and in the U.S. Post Office in Sells, Arizona, and at the Livestock complex if the property is unauthorized livestock; and (ii) publish a public notice of sale in a local newspaper near the Indian agricultural lands where the property was located. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice, whichever is later.

Sec. 110 – Redemption of impounded livestock or other property.

A person may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under Section 112 and completing all corrective actions as provided in Section 104.

Sec. 111 – Sale of impounded livestock or other property .

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and paying all penalties, damages, and costs under Section 112 and completing all corrective actions as provided in Section 104, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, condemned and destroyed, or otherwise disposed of.

(c) The purchaser will receive a bill of sale or other written receipt evidencing the sale.

Penalties, Damages, and Costs

Sec. 112 – Penalties, damages, and costs payable by trespassers.

Trespassers on Indian agricultural land must pay the following penalties and costs:

- (a) Collection of the value of the products illegally used or removed plus a penalty of double the value of the products illegally used or removed;
- (b) Costs associated with any damage to Indian agricultural land and/or property;
- (c) The costs associated with enforcement of this Ordinance, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;
- (d) Expenses incurred in gathering, impounding, caring for, and disposal of unauthorized livestock in cases which necessitate impoundment under Section 107; and
- (e) All other penalties authorized by law.

Sec. 113 – Determination of the value of forage or crops consumed or destroyed.

The Nation's Realty Office will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

Sec. 114 – Determination of the value of the products or property illegally used or removed.

The Nation's Realty Office will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

Sec. 115 – Determination of the amount of damages to Indian agricultural land.

The Nation's Realty Office will determine the damages to Indian agricultural land by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

Sec. 116 – Determination of the costs associated with enforcement of the trespass.

Costs of enforcement may include detection and all actions taken by the Nation through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

Sec. 117 – Failure to pay the assessed penalties, damages and costs.

(a) The Nation will refuse to issue any permit for use, development, or occupancy of Indian agricultural lands to any person who fails to pay any penalties, damages or costs assessed under this Ordinance; and

(b) The Nation may initiate in the Judicial Court of the Tohono O'odham Nation a civil action or criminal complaint to enforce this Ordinance and payment of any penalties, damages or costs assessed under this Ordinance.

Sec. 118 – Distribution of proceeds from assessment of trespass damages and costs.

(a) All amounts recovered under Section 112 of this Ordinance shall be treated as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) Proceeds recovered under Section 112 of this Ordinance may be distributed to:

- (1) Repair the damage to the Indian agricultural land and property;
- (2) Reimburse the affected parties for loss due to the trespass; or
- (3) Reimburse the Nation for costs associated with the enforcement of this Ordinance.

Sec. 119 – Deficiency assessment.

If the Nation does not collect enough money to satisfy the penalty assessed pursuant to Section 112, the Nation's Realty Office will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within five business days from the date of receipt, the deficiency will be pursued through legal action. The Nation's Realty Office may send a copy of the notice to the Indian landowner, other affected parties (if any), and any known lien holders.

*Judicial Review***Sec. 120 – Judicial Review.**

(a) A person aggrieved by a final action of the Nation's Realty Office may apply to the Judicial Court of the Tohono O'odham Nation for review of the final action of the Nation's Realty Office.

(b) Any person desiring to appeal a final action of the Nation's Realty Office must file an application for judicial review within 15 calendar days after receiving notice from the Nation's Realty Office of its final action.

(c) The reviewing court shall decide all relevant questions of law presented, interpret constitutional and statutory provisions, and determine the basis for the action of the Nation's Realty Office. The reviewing court shall uphold the action of the Realty Office unless the court determines that the Realty Office's action was:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. Contrary to constitutional right, power, privilege, or immunity;
3. In excess of statutory jurisdiction, authority, or limitations, or in violation of statutory right;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence on the record taken as a whole.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving and Adopting the Tohono O'odham Agricultural and Range Resource
Management Trespass Ordinance)

RESOLUTION NO. 03-111

1 **WHEREAS, in 1993, the Congress of the United States enacted the American Indian Agricultural**
2 **Resource Management Act, 25 U.S.C. § 3701 *et seq.*, ("AIARMA") to provide for the**
3 **management of Indian agricultural lands, including rangelands, and related**
4 **renewable resources in a manner consistent with identified tribal goals and**
5 **priorities for conservation, multiple use and sustained yield; and**

6 **WHEREAS, pursuant to AIARMA, Indian tribes which adopt the regulations promulgated by the**
7 **Secretary of the Interior shall have concurrent jurisdiction with the United States**
8 **to enforce the trespass provisions of AIARMA and the Secretary's regulations; and**

9 **WHEREAS, the Secretary of the Interior promulgated regulations pursuant to AIARMA in 2001**
10 **as 25 C.F.R. Part 166; and**

11 **WHEREAS, it is in the interests of the Nation to assert civil regulatory jurisdiction over trespass**
12 **actions involving Indian and non-Indian persons and property on the Nation's lands;**
13 **and**

14 **WHEREAS, adopting the regulations promulgated by the Secretary of the Interior pursuant to**
15 **AIARMA is consistent with and in furtherance of the directives of this Council in**
16 **Resolution No. 29-81 and Resolution No. 00-097; and**

17 **WHEREAS, the Domestic Affairs Committee of the Legislative Council recommends approval of**
18 **the Tohono O'odham Agricultural and Range Resource Management Trespass**
19 **Ordinance.**

20 **NOW, THEREFORE, BE IT RESOLVED THAT:**

- 21 **1. The Tohono O'odham Agricultural and Range Resource Management Trespass**
22 **Ordinance, in the form attached hereto, is hereby enacted as an ordinance of the**
23 **Tohono O'odham Nation and shall be designated Ordinance No. 03-01.**
- 24 **2. The Nation's Chairman is authorized and directed to take all reasonable and**
25 **necessary steps to implement this Resolution and the Tohono O'odham**
26 **Agricultural and Range Resource Management Trespass Ordinance.**

27 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 04TH, Day**
28 **of MARCH, 2003 at a meeting at which a quorum was present with a vote of 1,981.35 FOR; -0-**
29 **AGAINST; 436.15 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by**
30 **Section 1 (c) and 1 (i) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by**
31 **the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
32 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
33 **18, 1934 (48 Stat. 984).**

RESOLUTION NO. 03-111

(Approving and Adopting the Tohono O'odham Agricultural and Range Resource Management Trespass Ordinance)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Rita A. Martinez
Rita A. Martinez, Legislative Chairwoman

5th day of March, 20 03

ATTEST:

Julianna Saraficio
Julianna Saraficio, Acting Legislative Secretary

04th day of March, 20 03.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 5th day of March, 20 03 at 5:10 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Rita A. Martinez
Rita A. Martinez, Legislative Chairwoman

APPROVED

on the 5th day of March, 20 03

DISAPPROVED

at 5:28 o'clock, P.M.

Edward D. Manuel
EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 06 day of

March, 20 03, at 10:41 o'clock, A.M.

Julianna Saraficio
Julianna Saraficio, Acting Legislative Secretary