

**Dry Creek Rancheria
Band of Pomo Indians**

Government Code

TITLE 10. LAND USE ORDINANCE

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CHAPTER 1. SHORT TITLE, DECLARATION OF NEED, AND PURPOSE

SECTION 1. Short Title

This Ordinance shall be known as and may be referred to as the **“Dry Creek Land Use Ordinance.”**

SECTION 2. Findings

The Dry Creek Rancheria Tribal Council finds that:

(A) The Dry Creek Rancheria was established to provide a permanent homeland for the use and benefit of the Dry Creek Rancheria.

(B) The existence of land within the Dry Creek Rancheria provides opportunities for members and other Dry Creek residents to pursue livelihoods dependent on land resources.

(C) Areas near the Dry Creek Rancheria contain sufficient suitable land to accommodate future urban type commercial, residential, and industrial uses, while maintaining the rural character of the Dry Creek Rancheria.

(D) Indian culture emphasizes living within nature's limitations rather than controlling nature for what is perceived by some as man or woman's benefit. Land use on the Dry Creek Rancheria should be compatible with the natural physical and aesthetic nature of Rancheria lands. Development which strips the land of its vegetation, destroys wildlife habitat, substantially alters the natural features of the land, or otherwise is incompatible with the natural carrying capacity and ecological balance of the land is inconsistent with Indian culture.

SECTION 3. Declaration of Need and Purpose

The fundamental purpose of this Ordinance is to provide for the orderly development of Dry Creek Rancheria lands and resources and to provide for the protection of all Rancheria resources.

In all land use activities and projects, the Tribe shall:

(A) Diligently advocate achievement of self-determination and self-governance;

(B) Protect and enhance both human and natural resources for succeeding generations;

(C) Promote beneficial land uses with the least impact on environmental degradation, risk to health or safety, or other undesirable and unintended consequences;

(D) Preserve the Tribe's historical, cultural, and natural resources; and

(E) Facilitate timely, efficient, and safe development of approved and permitted Land Use activities.

SECTION 4. Authority and Scope

The Dry Creek Land Use Ordinance is enacted by the Dry Creek Rancheria Tribal Council pursuant to its general duty and authority under Article V of the Articles of Association to exercise the governmental and proprietary powers of the Dry Creek Rancheria; to protect and preserve Tribal property, wildlife, and natural resources; to cultivate and preserve Indian culture; and, to protect the health, welfare, and security of the Dry Creek Rancheria, its members, and the interests of all those individuals residing or owning property on the Dry Creek Rancheria.

SECTION 5. Right of Tribe to Govern Internal Affairs

The power to regulate land use is an inherent and essential part of the authority of any 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.

CHAPTER 2. DEFINITIONS

As used in this Ordinance, the following words will have the meanings given them in this Section unless the context plainly requires otherwise.

(A) “Administrative Review” means an abbreviated review and permitting procedure for Residential Use only, whereby the Director may, at his/her discretion, issue a permit without Department approval.

(B) “Appellant” means the Person appealing a decision of the Director or Department to the appeal board.

(C) “Applicant” means the Person responsible for a Land Use activity or project or any Person designated by the Tribal Council as being responsible for completing any activities and projects.

(D) “Commercial and/or Government Community Use” means any structure or activity that is not for Residential Use as defined herein.

(E) “Department” means the Dry Creek Rancheria Land Use Department.

(F) “Director” means the Director of the Dry Creek Rancheria Land Use Department.

(G) "Farming Activities" means 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 Rancheria, 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.

(H) "Forest Activities" means 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 Rancheria, 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).

(I) "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.

(J) "Land Use" means activities such as zoning; real property development, including the construction or modification of structures; and any activity or project that has the potential to affect the environment or the health, safety, or general welfare of the Tribe.

(K) "Permit" means the whole or any part of any license, certificate, approval, or similar form of permission which may be required of any person by provisions of this Land Use law.

(L) "Permittee" means the person listed on a permit as being responsible for any Land Use activity or project.

(M) "Person" means any Tribal member, Tribal employee, individual, partnership, firm, company, subcontractors or contractors, corporation, association, organization, estate, governmental entity, or any other legal entity or its representative, agents, or assigns. Use of the singular shall also include the plural.

(N) "Potential to Affect the Environment" means any activity or project that alters the chemical, physical, and biological integrity of the natural environment and its resources.

(O) "Potential to Affect the General Health, Safety, or Welfare of the Tribe" means any activity or project that has any affect, harmful or beneficial, on the general health, safety, or welfare of the Dry Creek Rancheria.

(P) "Residential Use" means any structure or activity with a primary purpose to provide sleeping and eating quarters for people residing therein or any structure or activity directly adjacent to same. Said structures shall be limited to dwelling units that have no more than four dwelling units in one structure.

(Q) "Tribal Council" means the governing body of the Dry Creek Rancheria of Pomo Indians.

(R) "Tribal Lands" mean the Dry Creek Rancheria lands.

(S) "Tribal Land Use Regulations" means the standards and procedures prescribed by Tribal programs in accordance with this Ordinance and approved by the Dry Creek Rancheria Tribal Council. Tribal Land Use Regulations shall include all Tribal programs, standards, and procedures existing upon the effective date of this Ordinance and those adopted after the effective date of this Ordinance.

(T) "Tribal Policies" means the policies set forth in this Ordinance.

(U) "Tribal Programs" means the duly established governmental departments, divisions, agencies, or enterprises of the Dry Creek Rancheria.

CHAPTER 3. ZONING MAPS

SECTION 1. Establishment of Zones; Provision for Official Zoning Maps

(A) The Dry Creek Rancheria is hereby divided into zones. Such zones shall be noted on an Official Zoning Map which, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this Ordinance.

(B) The Official Zoning Map, comprising several sections, shall be identified by the signature of the Chairperson of the Board of Directors, together with the date of adoption of this Ordinance.

(C) If, in accordance with the provisions of this Ordinance, 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 Ordinance. Any unauthorized change, of whatever kind, by any person or persons shall be considered a violation of this Ordinance 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 Chairperson's office. 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.

(F) 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 Ordinance or any subsequent amendment thereof.

SECTION 2. 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:

- (A) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (B) Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines;
- (C) Boundaries indicated as approximately following city limits shall be construed as following city limits;
- (D) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- (E) 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;
- (F) 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
- (G) Boundaries indicated as parallel to or extensions of features indicated in subsections (A) through (F) 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 (A) through (G), the Department shall interpret the zone boundaries.

CHAPTER 4. TRIBAL LAND USE DEPARTMENT

SECTION 1. Establishment

The Tribe hereby creates and establishes, pursuant to this Ordinance, the Tribal Land Use Department (the "Department"), a governmental agency and subordinate subdivision of the Tribe.

SECTION 2. Powers and Duties

The Department shall have the authority to regulate all land use activities and projects on Tribal lands. The Department shall have the authority to review for compliance with this Ordinance any and all land use activities and projects on Tribally owned fee lands. The Department shall have the specific authority to:

- (A) Oversee the promulgation of and assist in the development of Tribal land use regulations for Tribal Council's review and approval;
- (B) Coordinate and supervise the timely and efficient review and processing of permit applications;
- (C) Issue Permits and Certificates of Occupancy or Completion;
- (D) Review and monitor all land use activities and projects on Tribal lands;
- (E) Enforce compliance with a permit through Tribal policies and Tribal land use regulations; and
- (F) Enforce compliance with Tribal policies and Tribal land use regulations by issuing administrative orders for any land use activity or project that has not been issued a permit, which may include an assessment of a fine or penalty.

SECTION 3. Composition of Department

- (A) The Tribal Council shall appoint a Lands use director ("Directors") who shall have the primary responsibility for carrying out the duties of the Department. The Director's staff shall include a field inspector/enforcement officer.
- (B) The members of the Department shall collectively, as a result of training and experience, be well qualified to analyze and interpret environmental trends, regulations, planning and construction designs, building and safety codes; and to appraise the scientific, economic, social, aesthetic, and cultural needs and interests of the Tribe in light of the policies set forth herein. Members of the Department shall serve without compensation. The Department shall consist of existing staff.

SECTION 4. Cooperation with Tribal Programs and Other Tribal Agencies

The Director shall coordinate his/her responsibilities with the Tribal programs having an interest in any land use activity or project. The Tribal programs shall have the following duties:

- (A) Develop Tribal land use regulations, in consultation with the Department, to be submitted to the appropriate standing committee of the Tribal Council for review and recommended action to the Tribal Council;
- (B) Assist the Department in implementing and enforcing Tribal policies and Tribal land use regulations;
- (C) Assist in reviewing permit applications and making findings and recommendations to the Department as to whether the proposed land use activity or project complies with Tribal policies and Tribal land use regulations; and
- (D) Assist in monitoring land use activities and projects to ensure compliance with Tribal policies and Tribal land use regulations.

CHAPTER 5. ZONING CHANGES

SECTION 1. Initiation of Zoning Change

- (A) A proposed zoning change may be initiated by:
 - (1) Petition to the Department by any interested person or by the Director;
 - (2) Action of the Department upon its own motion; or
 - (3) Action by the Council.
- (B) Any petition for a zoning change shall provide, at the minimum, the following information:
 - (1) Legal description of the property to be rezoned;
 - (2) 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
 - (3) A description of the proposed zoning change and an explanation of the grounds for the rezone.

SECTION 2. Notice of Proposed Zoning Change

Upon receipt of a petition for a zoning change, the Department shall give notice of the petition as follows:

- (A) The Department shall provide notice that includes:
 - (1) A statement of the time, place, and nature of public proceedings on any proposed zoning change;
 - (2) A statement of the purpose of the proposed zoning change and the legal authority under which it is proposed;
 - (3) Either the specific language of the proposal or a description of the proposal's contents;
 - (4) If 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
 - (5) The name of the person in the Department to whom the public may direct questions about the proposal.

- (B) The notice shall be publicized by:
 - (1) Being provided to each member of the Council;
 - (2) Being published at least twice in a newspaper or newsletter of general circulation by the Rancheria; and
 - (3) Being posted conspicuously at the Tribal Administrative Building.

SECTION 3. Public Participation in Zoning Changes

No sooner than thirty (30) days or no later than forty-five (45) days after issuance of the last notice required by Section 2, the Department shall schedule a public meeting at which any person may express his or her views on the proposal orally or in writing, provided, however, that the agency may set a reasonable limit on the length of time each person may speak.

SECTION 4. Department Action and Effective Date

- (A) If, after hearing on any petition, the Department determines to grant the proposed zoning change, it shall announce its decision on the proposal by:
 - (1) Providing a copy of its decision to each member of the Council;
 - (2) Publishing its decision once in a newspaper or newsletter of general circulation by the Rancheria; and
 - (3) Posting a copy of its decision conspicuously at the Tribal Administrative Building.

(B) The final zoning change as published by the Department shall be effective and shall be noted on the appropriate Official Zoning Map forty-five (45) days after the Department's decision is announced, unless before that date, the Council acts to amend or reverse the Department's decision.

SECTION 5. Council Retention of Authority

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

CHAPTER 6. NON-CONFORMING LOTS, USES, AND STRUCTURES

SECTION 1. Intent

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

(B) To avoid undue hardship, nothing in this Ordinance 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 Ordinance and upon which actual building construction or site preparation has been diligently carried on.

SECTION 2. Non-Conforming Lots of Record

(A) In any zone in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption or amendment of this Ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail 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 Department.

B) 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 Ordinance and, further, if all or part of the lots do not meet the

requirements of lot width and area established by this Ordinance, then the lands involved shall be considered to be an undivided parcel for the purpose of this Ordinance and no portion of such parcel shall be used or sold which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

SECTION 3. Non-Conforming Uses of Land

Whenever, on the effective date of adoption or amendment of this Ordinance, a lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, as long as it remains otherwise lawful, subject to the following provisions:

(A) No such non-conforming 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 Ordinance, unless the additions conform in all respects to this Ordinance or are approved under the procedures and standards for variances.

(B) No such non-conforming 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 Ordinance.

(C) If any such non-conforming 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 Chapter for the zone in which such land is located.

SECTION 4. Non-Conforming Uses of Structure

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

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

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

(C) 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.

SECTION 5. Non-Conforming Uses of Structure and Land

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

(A) No existing structure devoted to a use not permitted by this Ordinance 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;

(B) Any non-conforming 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 Ordinance, but no such use shall be extended to occupy any land outside of such building;

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

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

(E) Whenever a non-conforming use of a structure, or structure and land in combination, is discontinued or abandoned for one-hundred eighty (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;

(F) 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 Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthened 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

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

CHAPTER 7. PERMIT PROCESS AND PROCEDURE

SECTION 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, provided it is conducted in accordance with the provisions of this Ordinance.

SECTION 2. Activities Requiring Permits

(A) Building Permit. No building, other structure may be erected, moved, added to, or structurally altered without a building permit.

(B) Conditional Use Permit. No person shall engage in any land use that may only be conducted as a conditional use within a zone without first obtaining a conditional use permit from the Director.

SECTION 3. Building and Conditional Use Permits

A permit application shall contain, at a minimum, the following information:

(A) The legal description of the land involved;

(B) Name or names of the owner(s) 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 applicant's explanation of how the building to be built or the conditional use conforms to the requirements of this Ordinance; and

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

SECTION 4. Permit Application

(A) An application for a land use permit shall be made through the use of forms designated by the Department and approved by the Tribal Council. The applicant shall submit a permit application and any studies, reports, or other reasonable information requested by the Director of the Department, or Tribal programs.

(B) Every application shall contain, at a minimum, the following information:

(1) The name and title of the applicant;

- (2) The location of the proposed activity;
- (3) A concise and factual description of the proposed activity including:
 - (a) Any proposed physical construction;
 - (b) Any use of natural resources; and
 - (c) Any potential impacts to the environment, whether adverse or beneficial.
- (4) A detailed site plan if necessary or appropriate;
- (5) A period of time for which the permit is requested;
- (6) A reference to the Tribal land use regulations governing the proposed land use activity or project;
- (7) A complete set of detailed plans and specifications, including but not limited to, any proposed structures showing compliance with building, fire, and safety codes; and
- (8) In the case of a phased land use activity or project, the applicant shall submit a complete set of detailed plans and specifications for that portion of the land use activity or project.

SECTION 5. Permit Application Fees

Upon the submission of the permit application, the applicant shall pay a permit application fee according to the following schedule:

- (A) A permit fee of \$5 per \$1,000 of the total cost of the residential land use activity or project; and
- (B) A permit fee of \$10 per \$1,000 of the total cost of the commercial/governmental-community land use activities or projects.

SECTION 6. Permit Application Review

(A) The Director may conduct an administrative review of applications for residential use and issue a permit, only if the Director determines that the application complies with Tribal polices and all applicable Tribal land use regulations. When the Director conducts an administrative review of an application he/she shall issue or deny a permit within two weeks of receiving a complete application.

(B) For all other applications, the Director shall review the permit application and determine whether the permit application is complete. If a permit application is complete, the Director shall then direct the appropriate Tribal programs to review the application and establish a time period for the submission of written findings to the Director. The Director may request review of permit applications by Tribal offices, agencies or programs whose regulations are enforced under this Chapter.

(C) Within one (1) week of receiving the application, the Director or the Tribal program may request the applicant to submit additional information, studies, or reports to assist in the review of the permit application. The additional information must be relevant to the purposes and policies of this Chapter. If the additional information is requested, the Director shall notify the applicant of the requested information and shall set a reasonable time period for the submission of the information.

(D) Within one week of receiving the application or additionally requested information, the Director, Tribal office, or program shall submit written findings on the permit application. If additional review time is requested, the Director may grant one extension of time not to exceed two weeks. The written findings shall address whether or not the activity or project proposed by the application complies with Tribal policies and the Tribal land use regulations. The written findings shall provide specific recommendations indicating how the proposed land use activity or project should be tailored to ensure such compliance.

(E) The Director shall provide the written findings to the applicant within one week of receipt thereof.

SECTION 7. Permit Application Review Meeting

(A) The Director shall schedule regular permit application review meetings on a weekly basis, or as needed, to review the written findings with the applicant and the Tribal programs. The Director shall notify the applicant and the appropriate Tribal programs of the meeting scheduled for the application.

(B) At the permit application review meeting, the Director may determine, based on the written findings and discussion with the Tribal programs, that the permit application requires either no and/or minor changes; or significant material changes.

(1) If the applicant agrees with the written findings or recommended changes, the applicant shall incorporate such changes into his/her application and the application shall be scheduled for final review by the Department.

(2) If the applicant does not agree with the recommended changes, the applicant will have an opportunity to review the written findings and recommendations with the Department at the next scheduled Department review meeting following the permit application review meeting. The applicant shall provide a narrative detailing why the applicant does not agree with the requirements prior to the meeting.

SECTION 8. Department Review and Decision Meeting

(A) The Department shall meet on at least a monthly basis or as necessary, to review, approve, modify, or deny permits. The Director shall notify the applicant and the appropriate Tribal programs of the meeting scheduled on his/her application. The Director and the Tribal programs shall review the written findings with the applicant.

(B) The Department shall reach a unanimous decision to approve or deny a permit and render a written decision and notify the parties within forty-five (45) days of the initial Department review meeting at which the application was scheduled for review. The Department's decision may specify terms and conditions to be included in the permit. At the applicant's request, the Department may grant one extension of time, up to forty-five (45) days, to render the Department's decision.

(C) If the permit application is denied or not approved through unanimous decision of the Department, the applicant may either submit a new application or appeal the Department's decision pursuant to Chapter 10 of this Ordinance.

SECTION 9. Bonding Requirement

The Department may require the posting of a performance bond, in an amount and of duration satisfactory to the Department to assure and guarantee the completing of site improvements including, but not limited to, grading, regrading, drainage, pollution prevention, site remediation, environmental controls, erosion control, lighting, screening, planting, building or safety improvements, and other reasonable conditions indicated on a site plan which will assure compliance with this Ordinance, or applicable Tribal program regulations.

(A) A performance or payment bond shall be delivered to the Dry Creek Band of Pomo Indians, in the form of a certified check, pledge of a bank book, fully insured by an agency of the United States government, with irrevocable power of attorney and acknowledged by the bank in which the funds are deposited, or a corporate surety bond, at the discretion of the Department, shall be posted by the applicant, to insure the completion of required improvements and utilities in the event the applicant shall fail to install site improvements within five (5) years from the date of the bond. The term of the performance bond may be extended by the Department upon approval of a petition from the applicant to the Department and subject to agreement of such extension by the surety company.

(B) The applicant and/or owner may apply to the Department for a reduction in bond when fifty percent (50%) of the cost of required improvements for the project have been completed and may apply to the Department for further reduction in the bond when seventy-five percent (75%) of the cost of required improvements for the project have been completed. Requests for such reduction shall be made in writing to the Department with a fully executed copy of the Department's bond form attached thereto.

(C) Prior to the release of the performance bond, the applicant and/or owner shall present a maintenance bond equal to at least ten percent (10%) of the initial performance bond. Such bond shall be for a period of (one) year and shall guarantee the improvements installed.

SECTION 10. Final Tribal Council Approval

Once a permit has been issued for commercial use, the permittee shall obtain Tribal Council approval for the necessary funding before commencing the permitted commercial use.

CHAPTER 8. PERMIT CONDITIONS

SECTION 1. Permit Terms and Conditions

Upon approving a permit application, the Department or the Director in an administrative review matter, may include terms and conditions that are reasonably necessary and appropriate for ensuring compliance with Tribal policies and Tribal land use regulations.

SECTION 2. Permit Modifications

(A) If significant and material changes have occurred since the approval of the permit, the permittee shall file a permit modification application describing the changes, the proposed modifications to the permit, and any necessary information regarding the implementation of such changes.

(B) The permit modification application shall demonstrate that the proposed changes comply with the Tribal policies and Tribal land use regulations.

(C) The Director shall review the permit modification application with the permittee and inspect the project. The Department, based on the Director's recommendations, may either approve the application and modify the permit or deny the application.

(D) If the permit modification application is denied, the existing permit shall remain in full force, and effect and the permittee may request a hearing with the Department to review the Director's decision.

SECTION 3. Permit Duration and Extension

(A) All permits shall be effective for a limited period of time, ranging from less than a one year period and not exceeding five years. If a permittee requires an extension of time in order to complete any activity under an approved permit, the permittee shall file an extension request no later than forty-five (45) days prior to the expiration of the permittee's existing permit.

(B) The Director shall review the permit extension request with the permittee and inspect the project. The Director shall either approve the extension under such terms

and conditions as the Director deems necessary or appropriate or request that the permittee obtain a permit modification.

CHAPTER 9. CERTIFICATE OF OCCUPANCY OR COMPLETION

SECTION 1. Certificate Required

No land use activity or project shall be occupied, used, or operated, in whole or in part, until a Certificate of Occupancy or Completion (hereafter "CO") has been issued by the Director stating that the land use activity or project complies with all building, fire, and safety codes, and the terms and conditions of the permit.

SECTION 2. CO Application

(A) Upon the completion of the land use activity or project, the permittee shall apply for a CO. Within one week of receiving the CO application, the Director shall review the CO application and inspect the project with the appropriate Tribal programs.

(B) Within one week of reviewing the CO application, the Director may either approve the CO application, and thereupon issue a CO, or notify the permittee in writing of the measures required to attain compliance with the terms and conditions of the permit.

(C) Upon completion of the required compliance measures, the permittee shall submit a revised CO application demonstrating evidence of compliance.

(D) The Director may, at his/her discretion, issue a temporary or a partial CO if the land use activity or project is substantially complete and the completed portion of the land use activity or project has satisfied the required compliance measures. The temporary CO shall specify the time-frame within which the remaining required compliance measures shall be completed. The partial CO shall specify the portion of the structure that may be occupied or used. Failure to complete the required compliance measures within the established time-frame may result in enforcement action.

(E) If the permittee fails or refuses to comply with the terms and conditions of the permit, or if the activity or project fails to meet the Tribal policies or Tribal land use regulations, the Director shall not issue a CO and the land use activity or project shall not be occupied, used, or operated in any way. The Director shall set forth his/her reasons for such denial in a detailed written decision, and shall send a copy of his/her decision to the permittee.

(F) The permittee may appeal the Director's decision pursuant to Chapter 15 of this Ordinance.

CHAPTER 10. VARIANCES

SECTION 1. Authority to Grant

The Director may authorize a variance from the requirements of this Ordinance whenever the criteria of this Chapter are met, provided, however, that no variance shall be granted to allow the use of property for a purpose not authorized either as an outright permitted use or conditional use within the zone in which the proposed use would be located. In granting a variance, the Director may attach conditions necessary to protect the best interests of the surrounding property and the Dry Creek Rancheria as a whole and achieve the purposes of this Ordinance.

SECTION 2. Variance Application Procedure

Any person or permittee who requires a variance from a specific Tribal Land Use Regulation shall file a variance application with the Director setting out the specific regulation for which the variance is requested and the justification for the requested variance.

(A) An application may be filed by one or more of the following entities or persons:

- (1) The owner of the property;
- (2) Whenever the property is held in trust, the beneficial owner;
- (3) A purchaser of the property under a duly executed written contract, with the written consent of the seller;
- (4) A lessee of property, with the written consent of the owner; or
- (5) The duly authorized agent of any of the foregoing;
- (6) Any Tribal governmental official acting in his official capacity; and
- (7) Any person whose interests are or would be adversely affected by the uses of the land allowed under this Ordinance if not altered.

(B) An application for variance must contain:

- (1) The name and address of the property owner and if different, the applicant;
- (2) The legal description of the property;
- (3) The nature of the variance sought;

(4) 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

(5) The grounds upon which the variance is sought, responding to each condition that must be met for a variance, set out in Section 5 of this Ordinance.

SECTION 3. Criteria

The Department may grant a variance if the person or permittee provides sufficient evidence that:

(A) The granting of a variance will not undermine the purposes and policies of this Ordinance; and

(B) The proposed variance will not adversely affect the environment, the general health, safety, and welfare of the Tribe or Tribal lands; and

(C) Denying the variance will cause the person or permittee to suffer hardship out of proportion to the benefit intended by the Tribal policies or Tribal land use regulations; and

(D) The Tribal Land Use Regulation from which a variance is sought can be properly mitigated or the affect of the variance is neutral.

SECTION 4. Hearings

Within thirty (30) days of receipt of an application for variance the Director shall hold an informal public hearing at which persons may present their view in writing or orally.

SECTION 5. Grant of Variance

(A) The Director shall grant, deny, or grant with conditions any variance sought within thirty (30) days of the hearing required by Section 4 publishing notice once in a newspaper or newsletter of general circulation on the Rancheria.

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

(1) There are unnecessary, unreasonable hardships, or practical difficulties which can be relieved only by modifying the lateral requirements of this Ordinance;

(2) There are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or uses referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or

uses in the same zone; provided, however, that nonconforming land, uses, or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

(3) Granting the application will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises;

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

(5) Granting the application 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 Rancheria community; and

(6) Granting of the application will be in general harmony with the intent and purpose of this Ordinance.

SECTION 6. Effective Date of Variance

A variance granted by the Director shall become effective twenty (20) days after issuance of the notice of decision, provided, however, in case the Director's decision is appealed to the Department, the variance shall not be effective until the Department has acted on the appeal.

SECTION 7. Term of Variance

(A) Variance Right Must Be Exercised To Be Effective. A variance granted under this Ordinance 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 Department. 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 thirty (30) days prior to the expiration of the variance shall extend the running of the six (6) month period until the Director has acted on such request.

(B) Cessation of Variance. Discontinuance of the exercise of any right authorized by any variance for a continuous period of six (6) 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 Ordinance applicable to the zone in which such property is located at the time of such abandonment.

(C) Transfer of Variance. Any valid variance granted pursuant to this Ordinance is transferable unless otherwise provided at the time of the granting of such variance.

SECTION 8. Appeal to Department

(A) Time to File Appeal. Any person aggrieved by the grant or denial of a variance and any Tribal agency may appeal the Director's decision to the Department within 20 days after publication of the notice required by Section 5. If the decision is appealed, the decision is automatically stayed pending the appeal, unless the Director specifically concludes in his written decision that the stay should not apply in a particular case. The Department may announce and enforce a stay if the Director exempts the grant of a variance from this automatic stay.

(B) Scope of Review; Relief Available. The Department shall affirm, reverse, or modify the Director's decision, as it deems fair and just, and may grant any further relief within the scope of its authorized power under this Ordinance.

CHAPTER 11. RESIDENTIAL ZONE

SECTION 1. Purpose

A Residential Zone 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 Chapter, the specific intent of this Zone is:

(A) To encourage construction upon, and the continued use of land for various residential purposes.

(B) To prohibit commercial and industrial uses of land and to prohibit any other use which would substantially interfere with the development or continuation of residential uses.

(C) To encourage the discontinuance of existing uses of land which would not be permitted as new uses under the provisions of this Ordinance.

(D) 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.

SECTION 2. Uses

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

(A) Single family dwellings.

(B) Two-family dwellings.

(C) Multiple-family dwellings and apartment houses.

(D) Public parks and playgrounds.

(E) Farming, gardening, orchards, and nurseries, provided that no retail or wholesale business office is maintained, and provided that no poultry or livestock, other than normal household pets, shall be housed within 100 feet of any residence other than the dwelling on the same lot.

(F) Home occupations as defined in Chapter 2 of this Ordinance.

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

(H) Special Property uses specifically allowed in such Zone as listed in Chapter 15 of this Ordinance.

SECTION 3. 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:

(A) Medical or dental offices and clinics;

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

SECTION 4. Area Regulations

The following area regulations apply in a Residential Zone:

(A) Lot Size and Percentage of Coverage.

(1) Single Family Dwelling. No single family dwelling shall hereafter be erected 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 fifty percent (50%) of the total lot area.

(2) Two-Family Dwelling. No two family dwelling shall hereafter be erected 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 fifty percent (50%) of the total lot area.

(3) Multiple-Family Dwelling. No multiple family dwelling of three or more residential units shall hereafter be erected 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 erected 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 fifty percent (50%) of the total lot area.

(B) Lot Sizes. Larger lot sizes for individual water and sewage systems or community water and sewage systems may be required.

(C) Set-Back Requirements.

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

Rights-of-Way, Public	Set-Back
Major or Secondary Arterials	60 feet
Collector of Access Roads	50 feet
Rights-of-Way, Private	
Any road, land, street or other access way in private ownership	50 feet
Any Water Way	200 feet

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

(3) 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 5 feet from any lot line.

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

SECTION 5. Sign Regulations

(A) The following signs only shall be permitted in this Zone.

(1) One unlighted sign not exceeding six square feet in area pertaining only to the sale, lease, rent, or hire of only the particular building, property, or premises upon which such sign is displayed.

(2) A sign advertising the sale of agricultural products raised or grown on the premises not to exceed six square feet in area.

(3) Name plates not exceeding two square feet in area bearing only the name and occupation of the occupant, and when so used such plates shall be located on the property and off the right-of-way.

(4) In a transitional area a sign, illuminated or otherwise but not of a flashing intermittent type, with a maximum area of 18 square feet, shall be permitted. Any external sign displayed shall pertain only to the use conducted within the building and shall be mounted flat against the building. An artificially illuminated sign shall not be permitted if it faces an abutting Residential Zone.

CHAPTER 12. COMMERCIAL ZONE

SECTION 1. Purposes

A Commercial Zone 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 Ordinance, the specific intent of this Ordinance is:

(A) 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;

(B) 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;

(C) 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;

(D) 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;

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

(F) 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.

SECTION 2. Uses

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

- (A) Any use permitted in a Residential Zone;
- (B) Retail trade establishment; and
- (C) Commercial and professional service establishment.

SECTION 3. Area Regulations

The following area regulations shall apply in a Commercial Zone.

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

(B) Set-Back Requirements.

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

Rights-of-Way, Public	Set-Back
Major or Secondary Arterials	60 feet
Collector of Access Roads	50 feet
Rights-of-Way, Private	
Any road, land, street or other access way in private ownership	50 feet
Any Water Way	200 feet

(2) 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.

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

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

SECTION 4. Sign Regulations

Any external sign displayed shall pertain only to the use conducted within the building. An artificially illuminated sign shall not be permitted if it faces an abutting Residential Zone. A sign shall be flat against the building.

CHAPTER 13. INDUSTRIAL ZONE

SECTION 1. Purposes

The Industrial Zone 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. The Industrial District is intended to provide adequate and appropriately located land for the types of manufacturing and other industries which normally have characteristics objectionable to residential, commercial, and even to certain agricultural uses and, therefore, should be placed at locations remote from residential and certain other districts.

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

(A) To establish standards for the height and size of buildings, the areas and dimension of yards and open spaces;

(B) To provide facilities to minimize traffic congestion;

(C) 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.

SECTION 2. Uses

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

(A) Any use permitted in a Commercial Zone, other than a dwelling except when exclusively connected with the business involved;

- (B) Manufacturing, repairing, compounding, processing, packing, or storage;
- (C) Wholesale distributing or outlet;
- (D) Railroad facilities, such as switching yards, spur, or holding tracks;
- (E) Kennels;
- (F) Motor vehicle wrecking or junk yard, provided that it is fully screened or fenced so that the storage and operation is not visible from any public right-of-way.

SECTION 3. Area Regulations

- (A) Setback. There are no front, side, or rear set-back requirements except for those found in Section 4; 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.
- (B) 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.
- (C) 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.

SECTION 4. Other Regulations

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

Rights-Of-Way	Set Back
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
Any Waterway	200 feet

- (B) Parking and Loading Space.

SECTION 5. Sign Regulations

Any external sign displayed shall pertain only to the use conducted within the building. An artificially illuminated sign shall not be permitted if it faces an abutting Residential Zone. A sign shall be flat against the building.

CHAPTER 14. OTHER ZONES

SECTION 1. Rural Residential and Agricultural

(A) Purpose. The purpose of this zone is to maintain the rural residential and agricultural character of the zone. Agricultural, forestry, single family rural residential, home industry, community facilities and related uses are permitted. No other uses are permitted except by special use permit; nor shall the subdivision of land into two or more parcels, any of which is less than 10 acres, for the purposes of sale or commercial development including commercial residential development, whether immediate or future, be permitted within this zone, except by special use permit. Any land divided into two or more parcels shall not be further divided for a period of five years without a special use permit.

(1) Permitted Uses

- (a) Agricultural Use Includes: agricultural crops and open field growing, pasturage and grazing, dairies, livestock, poultry and small animals, greenhouses incidental to agricultural uses, stables, on-site sales of produce grown within the zone. This use shall not include commercial feed lots.

(B) Agricultural Zones.

(1) Management Objectives and Purposes. The purposes of agricultural zones are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forest and open spaces; to improve utilization of tillable land; to improve irrigation on agricultural lands; to conserve and protect scenic resources; to maintain and improve the quality of air, water and land resources of the Rancheria, and to establish criteria and standards for agricultural uses and related supportive uses which are deemed appropriate.

(2) Permitted Uses

- (a) Crop production;
- (b) Pasture and/or livestock production;
- (c) Food gathering; and

(d) Other similar uses consistent with the management objectives and purposes set forth in this Section.

(3) Conditional Uses

- (a) Commercial activities in conjunction with agricultural uses;
- (b) Rural housing, including guest homes;
- (c) Parks, hunting and fishing preserves, and campgrounds;
- (d) Irrigation system development;
- (e) Landfill sites;
- (f) Highway commercial uses; and
- (g) Other similar uses consistent with the management objectives and purposes set forth in this Section.

(4) Limitations on Conditional Uses. The following guidelines shall apply to a conditional use in an agricultural zone:

- (a) Is compatible with agricultural uses and the management objectives and purposes set forth in this Section;
- (b) Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm uses;
- (c) Does not materially alter the stability of the overall land use pattern of the area;
- (d) The use is compatible with community area uses and is consistent with the purposes and management objectives set forth in this Section.
- (e) In the event that the conditional use involves the erection of a physical structure or a physical disturbance of the area, a site plan shall be submitted for the proposed use.

SECTION 2. Flood Plain Overlay

(A) Purposes. The Flood Plains Overlay Zone 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.

(B) 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 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 twenty percent (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.

(C) Flood Plain Development Permit.

- (1) Except as provided in section (B), 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 Department and shall contain, at a minimum, a description of the proposed development and a map showing the property boundary, its location in the Flood Plain Overlay Zone, and the location of the proposed development. The Tribal Land Use Department may, upon receiving an application, request such additional information as it needs to review the application.

(D) 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.

SECTION 3. Historic Preservation

(A) Purpose. The Historic Preservation Zone 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 Dry Creek Rancheria;
- (2) Encourage the understanding of and reverence for the actions of Pomo Indians in seeking to protect the identity and sovereignty of the Pomo Indians and its constituent parts;
- (3) To preserve, protect, and learn from archeological resources on the Dry Creek Rancheria;
- (4) To permit only those land uses that achieve these other purposes.

(B) Allowed Uses. Within a Historic Preservation Zone, the following uses are allowed and no building, structure, or premise shall be erected, 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 Chapter that, in each particular Historic Preservation Zone, are declared compatible with historic preservation and are so noted on the Official Zoning Map;
- (3) Non-developed natural resource use, such as fish and wildlife habitat;
- (4) Religious, cultural, and ceremonial activities;
- (5) Farming activities, as defined in Chapter 2, and forest activities as defined in Chapter 2 of this Ordinance, other than the harvest of trees except for the construction of any structures accessory to these activities.

(C) Historic Structures. If a structure within a 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 remodeled, enlarged, repaired, or otherwise altered without first seeking a permit from the Director of the Tribal Land Use Department.

(2) The Director shall only grant a permit under this section 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 sixty percent (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 forty-five (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.

(D) Signs. No signs are permitted in a Historic Preservation Zone except as required for traffic, safety, or historical designation, interpretation, or information.

SECTION 4. Traditional, Cultural, and Historical Zones

(A) Management Objectives and Purposes. The purposes of traditional, cultural, and historic zones are to preserve and protect lands with traditional, cultural, or historic significance; to preserve and protect roundhouses, traditional camp areas, pictograph areas, cemeteries, food preparing areas, root gathering areas, berry gathering areas, basket material gathering areas, special fishing areas, mill site areas, archaeological sites including glyph areas, paleontological sites such as fossil beds, campsite areas, and burial sites, trails, traditional special use areas related to natural products such as redbud, elderberry, manzanita, bulrushes, sedges, old growth redwood, , medicine, moss, oak, alder, clover, mushrooms, and willow, boundary markers, homesteads including buildings and rock fences; to preserve, improve, and re-establish areas that produced traditional foods and other natural products; to provide a physical basis for educating and instilling in Indian children, traditional, cultural and historic values; and to establish zones suitable for propagation of traditional foodstuffs and other plants.

(B) Permitted Uses.

- (1) Activities to accomplish and further the purposes and management objectives set forth in this Section;
- (2) Forest protection activities; and
- (3) Other similar uses consistent with the management objectives and purposes set forth in this Section.

(C) Conditional Uses.

- (1) Traditional, cultural, and historical studies;
- (2) Uses consistent with the underlying zone;
- (3) Housing; and
- (4) Other similar uses consistent with the management objectives and purposes set forth in this Section, including uses permitted in the primary zone.

(D) Limitations on Conditional Uses. The following limitations shall apply to a traditional, cultural, or historic character of the site:

- (1) Shall not destroy the traditional, cultural, or historic character of the site;
- (2) Shall contain adequate provision for study and documentation of traditional, cultural, or historic use;
- (3) Shall contain limits on types of equipment to be used on the site;
- (4) Shall be compatible with traditional, cultural, and historical use and consistent with the management objectives and purposes contained in this Section;
- (5) Does not alter the stability of the overall land use pattern in the area; and
- (6) In the event that the conditional use involves the erection of a physical structure or a physical disturbance of the area, a site plan shall be submitted for the proposed use.

CHAPTER 15. SPECIAL PROPERTY

SECTION 1. 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 Ordinance. None of these uses may be permitted in the following Zones: Rancheria Natural and Cultural Resources, Historic Preservation (except to the extent the use can both preserve and use historic structures, and Badlands, Environmental Protection Overlay Zone, and Forest Conservation Zone. Special Property Use Permits may contain conditional limitations.

SECTION 2. List of Special Uses (cemeteries, hospital, mobile home park, etc.)

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

(B) Cemeteries. Such uses shall be specifically excluded from Primary Agricultural Zones.

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

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

- (1) 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.
- (2) 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.

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

(F) 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:

- (1) Access to such uses shall be only from full width streets or roads;
- (2) Parking areas shall be paved or surfaced to eliminate dust or mud;
- (3) 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.

(G) Fertilizer Manufacturing Plants. Such uses shall be specifically excluded from all zones except primary agricultural and Industrial Zones.

(H) Fraternal Organizations, Lodges, Grange Halls, and Clubs.

(I) Hospitals, Sanitariums, Nursing Homes and Institutions and Philanthropic Uses, Other Than Correctional Institutions.

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

(K) 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.

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

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

(2) A greenbelt plant strip not less than 20 feet in width, shall be located along all lot lines of the park not boarding 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.

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

(N) 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.

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

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

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

(R) 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.

(S) Sewage Disposal or Treatment Plants.

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

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

(1) Access to such use shall only be from a major or secondary arterial;

(2) All requirements of the Indian Health Service shall be fulfilled; and

(3) 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.

SECTION 3. Area Regulations

(A) 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.

(B) 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.

SECTION 4. Special Use Application Procedure

(A) To seek a special use permit, the applicant must submit a written application to the Director. An application may be filed by one or more of the following entities or persons:

(1) The owner of the property;

(2) Whenever the property is held in trust, the beneficial owner;

(3) A purchaser of the property under a duly executed written contract, with the written consent of the seller;

(4) A lessee of property, with the written consent of the owner; or

(5) The duly authorized agent of any of the foregoing;

(6) Any Tribal governmental official acting in his official capacity; and

(7) Any person whose interests are or would be adversely affected by the uses of the land allowed under this Ordinance if not altered.

(B) An application 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.

SECTION 5. Hearings

Within thirty (30) days of receipt of an application for a special use permit the Director shall hold an informal public hearing at which persons may present their view in writing or orally.

SECTION 6. Grant of Special Use Permit

(A) The Director shall grant, deny, or grant with conditions any special use permit sought within 30 days of the hearing required by Section 5 of this Chapter and shall provide notice of this decision by publishing notice once in a newspaper or newsletter of general circulation by the Rancheria.

(B) A special use permit may only be granted if the Director finds, and documents in writing his findings and their basis, that:

(1) There are unnecessary, unreasonable hardships, or practical difficulties which can be relieved only by granting the special use permit;

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

(3) Granting the application will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises;

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

(5) Granting the application 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 Rancheria community;

(6) Granting of the application will be in general harmony with the intent and purpose of this Ordinance;

(7) The present and future needs of the Rancheria community will be served by the proposed development and that, on the whole, the community will be benefited more than impaired by approval; and

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

SECTION 7. Effective Date

A special use permit granted by the Director shall become effective twenty (20) days after issuance of the notice of decision, provided, however, in case the Director's decision is appealed to the Department, the special use permit shall not be effective until the Department has acted on the appeal.

SECTION 8. Terms

(A) Special Use Permit Right Must Be Exercised To Be Effective. A special use permit granted under this Ordinance shall be effective only when the exercise of the right granted thereunder shall be commenced within six (6) months from the effective date of the grant, unless a longer period be specified or thereafter allowed by the Director or Department. 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 thirty (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.

(B) 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 Ordinance applicable to the zone in which such property is located at the time of such abandonment.

(C) Transfer of Special Use Permit. Any valid special use permit granted pursuant to this Ordinance is transferable unless otherwise provided at the time of the granting of such special use permit.

SECTION 9. Appeal to Department

(A) Time to File Appeal. Any person aggrieved by the grant or denial of a special use permit and any Tribal agency may appeal the Director's decision to the Department within twenty (20) days after issuance of notice of the Director's decision. If the decision is appealed, the decision is automatically stayed pending the appeal, unless the Director specifically concludes in his written decision that the stay should not apply in particular case. The Department may announce and enforce a stay if the Director exempts the grant of a special use permit from this automatic stay.

(B) Scope of Review; Relief Available. The Department shall affirm, reverse, or modify the Director's decision, as it deems fair and just, and may grant any further relief within the scope of its authorized power under this Ordinance.

CHAPTER 16. ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES

SECTION 1. Notice of Violation; Cease and Desist Order

(A) Enforcement Authority of the Department. The Department and the Director, in conjunction with the field inspector/enforcement officer, shall have the authority to enforce compliance with any Tribal Land Use Regulation and to investigate or inspect suspected violations of a permit or non-compliance, or of any land use activity or project. Whenever the Director determines, after an investigation, that reasonable grounds exist to find that the person or permittee has violated any permit term or condition or any applicable Tribal Land Use Regulation or Department order, the Director may institute appropriate administrative proceedings in the name of the Department against any person or permittee.

(B) Department Orders. The Director shall have the authority to issue Cease and Desist Orders ("CDO"), Show Cause Orders ("SCO"), or Consent Orders.

(C) Cease and Desist Order.

(1) The Director may issue a CDO whenever he/she determines that reasonable grounds exist to find that a land use activity, activities or lack of activity presents a violation of any permit term or condition, any Tribal Land Use Regulation or Department order, and that imminent and substantial harm to the environment, the general health, safety, and welfare of the Tribe is likely to occur without the cessation of such activity.

(2) The Director may, without a prior hearing, issue a written CDO to any person or Permittee to cease such activity within a specified time period, and the person or permittee shall immediately take all necessary steps or measures to comply with the CDO.

(3) The Director, or his/her designated representative, or other Tribal official with authority, shall serve the person or Permittee with the CDO.

(4) The CDO shall be scheduled for a hearing in accordance with Chapter 15, Section 9, at the Department's next scheduled meeting, to determine the status of the alleged violation, any necessary remediation, or whether any other action or enforcement measure should be applied.

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

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

- (i) The type and degree of violation;
- (ii) The threat to public health and the environment posed by the violation;
- (iii) The difficulty of compliance and the financial and material means of the violator; and
- (iv) 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.

CHAPTER 17. MISCELLANEOUS PROVISIONS

SECTION 1. Severability

The provisions of this Ordinance are severable. Should any section or provision of this Ordinance be declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such determination shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the specific part declared to be unconstitutional or invalid.

SECTION 2. Effective Date

(A) Effective upon Enactment of Tribal Council. This Ordinance shall be effective upon enactment by the Tribal Council.

(B) Publication and Distribution of Tribal Land Use Regulations. The Director shall distribute copies of this Ordinance and all Tribal Land Use Regulations to every Tribal department and program and to any person responsible for any known or anticipated land use activities or projects.

(C) Application to Existing Activities and Projects. This Ordinance shall apply to any and all land use activities or projects on Tribal lands that are commenced after the effective date of this Ordinance. Any existing building or structure on Tribal lands shall not be required to obtain a permit pursuant to Chapter 7. Nonetheless, the operation of any existing land use activities or projects, including buildings and structures, shall be required to comply with all other provisions of this Ordinance.

SECTION 3. Sovereign Immunity Preserved

Nothing in this Ordinance shall be deemed as a waiver of the sovereign immunity of the Dry Creek Rancheria authorizing suit against the Tribe in any court other than Dry Creek Rancheria Tribal Court, nor shall it be deemed as authorizing a suit for damages against the Tribe in any action arising under this Ordinance, unless the Dry Creek Rancheria Tribal Council by specific, express, and unequivocal legislation should authorize such an action for damages.

