

TITLE 11 LAND

CHAPTER 1. LAND USE AND DEVELOPMENT

The Smith River Rancheria (the "Tribe") is a federally recognized Indian tribe eligible for all rights and privileges afforded to recognized Tribes. The Constitution of the Smith River Rancheria, as approved by the Bureau of Indian Affairs, establishes that the Smith River Rancheria Tribal Council (the "Tribal Council") is the governing body of the Smith River Rancheria. The Tribal Council is empowered under the Constitution of the Smith River Rancheria, Article IV, section 1, subsection (a) to represent the Tribe and act in all matters that concern the general welfare of the Tribe.

The Tribal Council is further empowered under the Constitution of the Smith River Rancheria, Article IV, section 1 subsections (f), (l) and (r) to protect and preserve the wildlife and natural resources of the Tribe's ancestral territory, to regulate hunting, fishing and trapping within the Tribe's ancestral territory, to manage and control land held by the Tribe and to exercise powers as needed to carry out these duties.

Article IV, section 1, subsections (a), (o), and (p) vests the Tribal Council with both judicial authority and the authority to prescribe the rules and processes for exercise of said authority; and the Tribe's Constitution, as approved of by the Bureau of Indian Affairs, further provides that the authority and jurisdiction of the Tribe shall extend to all land within the Tribe's ancestral territory. Pursuant to the Tribe's Constitution and inherent sovereign powers, the Tribal Council hereby enacts this Ordinance which shall hereinafter be cited as the Smith River Rancheria Land Use Ordinance (the "Ordinance").

§1. Findings and Purpose

The Smith River Rancheria finds and declares that:

Section 1.1. The Tribal Council adopts this Ordinance for the purpose of controlling land use within the Smith River Rancheria boundaries for the protection of the health, safety and welfare of the people who live within the Rancheria. Its aim is to encourage the most appropriate use of the land, to protect the Rancheria's economic and social stability, promote of orderly and responsible development on the Rancheria and to preserve the natural resources of the Tribe.

§2. Planning Board

Section 2.1 Planning Board. This Ordinance hereby establishes a Planning Board which shall have the powers and duties prescribed by this Section of this Ordinance. The Board shall consist of the members of the Tribal Council.

1. The Board members shall serve for the same period of time as the Board member sits as a member of the Tribal Council.

Section 2.3 Meetings. The Board shall establish a regular meeting schedule, and shall meet frequently enough so that it can take expeditious action and accommodate the business before it. Special meetings may be called by the Chairperson, or requested by a majority of the members of the Board.

1. A meetings of the Board shall be open to the public, and, whenever feasible, the agenda for each Board meeting shall be made available in advance of the meeting. Provided, the Chairperson, in his or her sole discretion may call a meeting into executive session when she determines it is in the interest of the Tribe to do so.
2. **Quorum.** A simple majority of the members of the Board, including the chairman, shall constitute a quorum. A quorum is necessary for the Board to take official action. If a Board member excludes himself from participating in any decision, his or her presence shall count for purposes of determining whether a quorum is present.
3. **Voting.** All actions of the Board shall be taken by majority vote, a quorum being present. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with or has been allowed to withdraw from the meeting as provided for respectively, in this Section.
4. A member may be excused from voting on a particular issue by majority vote of the remaining members present under any of the following circumstances:
 - a. If the member has a direct financial interest in the outcome of the matter or issue; or
 - b. If the matter at issue involves the member's own official conduct; or

- c. If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
5. A member may be allowed to withdraw from the entire remainder of the meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

Section 2.4 Board Officers. The Board shall elect its own Chairperson who shall preside over meetings pursuant to this Chapter and create and elect such other officers as he or she may deem necessary.

Section 2.5 Duties and Powers. The Review Board shall herein decide the following matters and exercise the following powers:

1. Appeals from any order, decision, requirement, or interpretation made by the Zoning Administrator or administrator, as provided in Ordinance;
2. Applications for special-use permits and zoning variances, as provided in Section 9.
3. Questions involving interpretations of the Tribal Zoning Map, including disputed boundary lines and lot lines.
4. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance and Tribal law.
5. The Board shall work cooperatively with the Zoning Administrator to amend, as necessary, the Tribal Zoning Map.
6. The Board shall report to the Tribal Council once a month at a duly convened Tribal Council meeting.

Section 2.6 Tribal Zoning Map. The first order of business for the Planning Board shall be to work cooperatively with the Zoning Administrator to draft and design a Tribal Zoning Map which, as described in Section 5.

§3. Zoning Administrator

Section 3.1 This Ordinance establishes the position of Zoning Administrator who shall be appointed by the Tribal Council and may be removed by a majority vote of the Tribal Council for cause or without cause.

Section 3.2 Duties. The Zoning Administrator shall have the following powers and duties:

1. To consult and cooperate with the Planning Board during its studies of the land use needs under Section 2 of this ordinance.
2. Upon the adoption of an Official Tribal Zoning Map by the Tribal Council, the Zoning Administrator shall have the responsibility to investigate violations, give notice thereof, and pursue prosecution in cases where violations remain uncorrected, under the provisions of Section 10 of this Ordinance.

§5: Tribal Zoning Map

Section 5.1 The Planning Board and Zoning Administrator shall cooperatively work to draft and design a Tribal Zoning Map to be adopted by the Tribal Council. The Tribal Zoning Map shall designate specific land use rules, regulations, zones and restrictions for all lands subject to the Tribe's zoning jurisdiction. Persons going forward with land uses that do not conform to the requirements of the Tribal Zoning Map shall be subject to the penalties described in Section 10. Applications for land use permits that do not conform to the requirements of the Tribal Zoning Map shall be denied unless the Tribal Council provides for a variance, as described in Section 9.

Section 5.2 Compulsory Land Use Designations. The Tribal Zoning Map shall designate exactly which lands subject to Tribal zoning jurisdiction are to be used for Residential and Commercial purposes.

Section 5.3 Permissive Land Use Designations. The Tribal Zoning Map may designate which lands subject to Tribal zoning are to be used for Agricultural, Forestry, Wilderness, Open Space, Recreation and/or other designations as the Planning Board, Zoning Administrator and Tribal Council deem appropriate or necessary.

Section 5.4 Public Examination. The Tribal Zoning Map, or an exact copy thereof, in the custody of the Planning Board, shall be available for examination by any member of the public at all reasonable times.

Section 5.5 Process for Adopting and Amending the Tribal Zoning Map. The Planning Board shall propose to the Tribal Council the Tribal Zoning Map and Amendments to the Tribal Zoning Map. The Tribal Zoning Map **may only be adopted by the Tribal Council at a duly convened Tribal Council meeting wherein a quorum of the Tribal Council is present after it has been subject to comment by membership of the Tribe.**

1. The Planning Board and the Zoning Administrator shall work diligently to draft and design the Tribal Zoning Map, which they shall submit to the Tribal Council for comments no later than one (1) year after the adoption of this Ordinance.
2. Upon presenting the first draft of the Tribal Zoning Map to the Tribal Council, the Tribal Council shall consider the opinions of the Planning Board and Zoning Administrator and determine if the draft is ready for comments from membership of the Tribe. If the Tribal Council determines that the draft is not ready for said comments, the Planning Board and Zoning Administrator shall make the necessary changes to the Tribal Zoning Map, based upon the Tribal Council's comments, and timely resubmit another draft to the Tribal Council.
3. When the Tribal Council determines that a draft of the Tribal Zoning Map is ready for comments from the tribal membership, it shall adopt a resolution submitting said draft to comment by the Tribe's membership.
4. The membership of the Tribe shall be noticed of the pending Tribal Zoning Map and shall be accorded no less than thirty (30) calendar days to submit written comments to the Planning Board. The Tribal Council, in its sole discretion shall determine if it or the Planning Board shall receive oral comments regarding the pending Tribal Zoning Map.
5. At the conclusion of the commenting period, the Planning Board shall incorporate the comments and concerns received from the Tribe's membership it deems appropriate and necessary into the Tribal Zoning Map.
6. No later than thirty (30) days after the conclusion of commenting period the Planning Board shall submit the Tribal Zoning Map to the Tribal Council at a duly convened Tribal Council meeting for adoption by the Tribal Council.

7. If the Tribal Council votes not to adopt the Tribal Zoning Map, the Planning Board shall make further changes to the Tribal Zoning Map and subject those changes to comment from the Tribal membership as described above.
8. The above process shall also be the process to amend the Tribal Zoning Map.

Section 5.6 Residential Designations. Residential zones, as designated on the Tribal Zoning Map, are specific areas in which development shall be restricted to housing for Tribal members. The Zoning Administrator, Planning Board and Tribal Council retain the authority, by the process enumerated in Section 5.5, to further specify zones for: single family dwellings, mobile homes, multiple family dwellings, apartments and playgrounds. The restrictions in this Section shall not forbid gardening, limited small animal husbandry and other reasonable activities by tribal residents or the construction of a tribal community center, museum or school.

Section 5.7 Commercial Designations. Commercial zones, as designated on the Tribal Zoning Map, are specific areas in which commercial development and activities are permitted, including, but not limited to: markets, schools, stores, clinics, offices, gas stations, warehousing, Laundromats, casinos, churches, cafes, entertainment, museums and light manufacturing. Residential uses are permitted within Commercial zones.

1. Special Commercial Use: Auto Repair: (*reserved*)

Section 5.8 Agricultural Designations. Agricultural zones, as designated on the Tribal Zoning Map, are specific areas that shall retain limited residential use and lower population density for purposes of farming and ranching. Permitted uses within Agricultural zones shall be limited to: single family dwellings, farming and raising livestock, farming, and related agricultural structures. The minimum parcel size for agricultural purposes shall be ____ contiguous acres.

Section 5.9 Wilderness Designations. Wilderness zones, as designated on the Tribal Zoning Map, shall be lands that the Tribal Council has decided to preserve in their natural state for the purposes of preserving natural, cultural and historic resources, including flora and fauna. All development shall be prohibited within Wilderness zones, aside from primitive hiking trails and picnic areas.

Section 5.10 Open Space Designations. Open Space zones, as designated on the Tribal Zoning Map, shall be lands that the Tribal Council has decided to preserve in their current state to preserve the integrity of the landscape and to protect against commercial and residential sprawl. All development shall be prohibited within Open Space zones, aside from primitive hiking trails and picnic areas.

Section 5.11 Setbacks. Within all zones as designated by the Tribal Zoning Map, the following building restrictions shall apply, setting out the minimum distance required between structures and the high water mark of the enumerated body of water.

1. Smith River. There shall be a _____ foot set back from the ordinary high water mark. All structures and major ground cover disturbances shall be prohibited within _____ feet of the high water mark.
2. All Other Streams/Creeks. A minimum set back of _____ feet from the ordinary high water mark. All structures and major ground cover disturbances shall be prohibited within _____ feet of the high water mark.
3. Drinking Water Sources. A minimum set back of _____ feet from the ordinary high water mark of those stream/creeks or other waterways that are sources of domestic drinking water.
4. Leach fields. A minimum set back of ten (10) feet from all property lines. A minimum of twenty-five (25) feet from banks or cuts. A minimum of one hundred (100) feet from streams, natural water courses and any domestic water source.
5. Septic Tanks. A minimum set back of five (5) feet from all property lines.
6. Reserve Area. All septic leach fields must have a 100% reserve area.

§6. Signage.

Section 6.1 No outdoor advertising sign visible to the traveling public may be erected or maintained except as provided in this Section unless it was erected before the adoption of this Ordinance.

1. Number. The number of off premise signs permitted for any one applicant shall be limited to two (2) signs on each highway approach to that applicant's place of business.

2. **Size.** On business premises, sign size is based on the linear frontage of the applicant's building, and shall not exceed 200 square feet without express written permission from the Planning Board. Off premise signs shall not exceed 200 square feet.
3. **Permits.** Businesses seeking to erect signs within the zoning jurisdiction of the Tribe shall inform the Zoning Administrator, who shall inform the applicant of the requirements of this Ordinance and grant the applicant a permit to erect the sign absent good cause not to issue a permit.
4. **General Requirements.**
 - a. Flashing, intermittent, or moving lights or moving parts shall not be used with any sign.
 - b. Signs shall not be placed to interfere with official traffic signs or driver visibility.
 - c. Signs shall not be closer than three (3) feet to a property line or right of way, and shall not extend more than fifteen (15) feet above ground level, or, if fastened to a building not higher than the highest part of the building.
5. All signs, sign faces and supports, shall be maintained in a good state of appearance and repair, as determined by the Zoning Administrator.

Section 6.2 Noncompliance. The Zoning Administrator may revoke any permit or order any sign removed for noncompliance with the provisions of this section. Such revocation shall be issued in writing and served to the person/business in violation of this Ordinance.

Section 6.3 Removal Notice. Notice shall not be given less than thirty (30) days prior to the removal of any sign. If the person/business in violation of this Ordinance does not remove a sign pursuant to an order and/or revocation by the Zoning Administrator, that person/business shall be assessed the costs of removing said sign.

§7. Nonconforming Uses

Section 7.1 General. At the discretion of the owner/resident, the use of any parcel of land or any structure which was lawful at the time of adoption of the Official Tribal Zoning Map may continue after the adoption although such use does not conform with the provisions

relating to the Land Use Zone in which the land or structure is situated.

Section 7.2 Discontinuance. A non-conforming use existing at the time of adoption of the Tribal Zoning Map may be discontinued; however, if it is discontinued for one year or more it shall then be deemed abandoned, and any further use must be in conformity with the use permitted in the zone in which the use exists.

Section 7.3 Uncompleted uses. Any structure intended or designed for a non-conforming use, the construction for which has been started but not completed at the time of adoption of the Tribal Zoning Map, may be completed and put to such non-conforming use, provided it is completed within one year after the adoption of the Map.

Section 7.4 Destruction. Any building or structure existing as a non-conforming use under the terms of the Tribal Zoning Map which is destroyed by fire or the elements may be reconstructed and restored as a nonconforming use provided the reconstruction or restoration is commenced within 6 months and completed within 18 months of the destruction.

Section 7.5 Maintenance. Normal maintenance and repair associated with a non-conforming use is permitted, provided that no enlargement or extension of such a use may be included as part of such maintenance and repair.

Section 7.6 Changes. The Planning Board may authorize a change from one non-conforming use to another non-conforming use, provided that the proposed use would be more suitable to the Land Use Zone in which it would be located than the non-conforming use which would be replaced.

Section 7.7 Expansion. No expansion or enlargement of a nonconforming use is permitted by this Section.

§8. Land Use Permits.

Section 8.1 Applications. After the adoption of the Tribal Zoning Map by the Tribal Council, any individual or organization must apply for and receive a Land Use Permit before commencing any construction of a new building or structure, or any alteration of an existing structure which will require more land area than the existing structure, or any moving or destruction of any structure, within lands subject to the Tribe's zoning jurisdiction. Applications for Land Use Permits shall be made to the Zoning Administrator, and shall be accompanied by

a statement of the purpose, nature, and extent of the proposed construction or alteration. The application and statement must be accompanied with a fee of \$_____.

Section 8.2 Issuance. The Zoning Administrator shall issue a Land Use Permit for the proposed activity if, upon reviewing the application and accompanying documents, the planned construction or alteration will be in conformity with the requirements of the Land Use Zone in which it will be situated. If the Zoning Administrator is not satisfied that such conformity will result, she may either require more information from the applicant, or deny the application.

Section 8.3 Appeal. In any case where the Zoning Administrator has denied an application for a Land Use Permit under this section, the applicant may appeal the denial to the Planning Board. The Planning Board shall uphold the Zoning Administrator unless, by a majority vote at a duly convened meeting, it decides that the planned activity will be in conformity with the requirements of the Land Use Zone in which it will be situated. The following procedures shall apply in such appeals:

1. Appeals must be filed within thirty (30) days after the applicant received notice of the Zoning Administrators decision and shall be filed in duplicate with the Zoning Administrator.
2. Upon filing of an appeal, the Zoning Administrator shall set a time and place for a hearing before the Planning Board which shall be held within thirty (30) days after its filing.
3. Notice of the time and place shall be mailed at no less than ten (10) calendar days before the hearing to the appellant/applicant, and shall be published at least once in a newspaper of general circulation within the Reservation and posted in a conspicuous place at the Tribal Administration Offices.
4. At the appellate hearing the Planning Board shall provide both the appellant/applicant and the Zoning Administrator an appropriate amount of time to make their arguments, submit evidence and call witnesses and shall take minutes of the meeting.
5. After the hearing the Planning Board shall make its decision on the appeal and shall within fifteen (15) days serve a copy of its decision on the appellant/applicant and the Tribal Council.

6. The Planning Board's decisions may be appealed within fifteen (15) days to the Tribal Council.

§9. Special Permits.

Section 9.1 The Planning Board shall have the power to grant Zoning Variances for uses which otherwise would not be permitted under this Ordinance. However, the Planning Board shall not grant a Variance unless it finds, by clear and convincing evidence, the following facts and puts such findings in writing:

1. That there are special circumstances or conditions affecting the land, building, or use referred to in the application for the variance; and
2. That granting the Variance will not be materially detrimental to the public welfare or injurious to property in the area adjacent to the property for which the Variance is sought; and
3. That granting the Variance will maintain the spirit and intent of this Ordinance, and will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

Section 9.2 Conditions. The Planning Board, in granting a Variance, may impose conditions to insure compliance and to protect adjacent property. Such conditions may include but shall not be limited to a limited duration; periodic review of the Variance and conditions; and restrictions upon the operation of the use for which the Special Permit is issued.

Section 9.3 Applications. An application for a Variance shall be made to the Planning Board and shall be filed with the Zoning Administrator together with a fee of \$20.00. Upon receipt of an application for a Variance, the procedures set forth in Section 8.3 shall apply, and the Zoning Administrator may offer an opinion in support of or in opposition to the Variance at a hearing before the Planning Board.

Section 9.4 Resubmission. No application for a Variance which has been denied wholly or in part shall be resubmitted for one year from the date of the order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Planning Board.

Section 9.5 Transferability. The Planning Board may order that a Variance is transferable, non-transferable, or transferable only upon a specified showing of fact; however, if the Board order does not specifically refer to transferability, the Variance shall be non-transferable.

§10 Violations of this Ordinance

Section 10.1 If the Zoning Administrator finds that any provision of this Ordinance or Tribal Zoning Map is being violated, he shall send a written notice to the person/business responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Zoning Administrator's discretion.

Section 10.2 The final written notice (and the initial written notice may be the final notice) shall state what action the Zoning Administrator intends to take if the violation is not corrected and shall advise that the Zoning Administrator's decision or order may be appealed to the Planning Board.

Section 10.3 Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Chapter or pose a danger to the public health, safety, or welfare, the Zoning Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in this Section.

Section 10.4 Upon continued violation of this Ordinance, the Zoning Administrator may issue summons to persons owning, renting, maintaining, occupying, residing within or building upon lands subject to Tribal zoning jurisdiction whom they have a reasonable suspicion have violated this Ordinance or regulations promulgated hereunder. The summons shall state:

1. The time and date that the Zoning Administrator became aware of the violation;
2. The location of the violation;
3. The specific section of this Ordinance, Tribal Zoning Map or regulation that was violated; and
4. The date and time the person is to appear before the Planning Board to contest the charges.

Section 10.2 Persons issued summons for violating this Ordinance or regulations promulgated hereunder shall appear before the Planning Board for

a hearing to determine if they violated this Ordinance or regulations promulgated hereunder. The Chairperson of the Planning Board shall preside over the hearing

Section 10.3 The Planning Board's duties during the hearing shall include:

1. Providing both the accused and the Zoning Administrator the opportunity to present their cases by presenting evidence, offering legal arguments, calling witnesses and cross examining witnesses;
2. Rendering written decisions based upon the record and evidence submitted by the accused and the Zoning Administrator, who shall present arguments on behalf of the Tribe, regarding whether the accused violated this Ordinance or regulations promulgated hereunder; and
3. Imposing penalties on those persons found to have violated this Ordinance or regulations promulgated hereunder in conformance with this Ordinance;

Section 10.4 The burden shall be on the Zoning Administrator to prove, by a preponderance of the evidence, that the person appearing before the Planning Commission violated this Ordinance and/or regulations promulgated hereunder. The Zoning Administrator shall make the Tribe's argument and present evidence first. The accused shall have an equal opportunity to present arguments denying the charges.

Section 10.5 The Planning Board shall render a written decision based upon the evidence set forth in the hearing. Said decision may be appealed to the Smith River Rancheria Tribal Court.

Section 10.6 After finding that a person has violated this Ordinance or regulations promulgated hereunder, The Planning Board, in its sole discretion, may order the appropriate penalty, depending upon the severity of the violation.

Section 10.7 Any act constituting a violation of the provisions of this Chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of Variances, conditional or special-use permits, shall subject the offender to a **civil penalty of up to \$100.00 per day.**

1. If the offender fails to pay this penalty within 30 days after being cited for a violation, the penalty may be recovered by the Tribe in a civil action in the nature of debt in Tribal Court.
2. At its option, the Tribal Council may impose a community service obligation to satisfy the penalty amounts. The offender must complete the number of hours required to pay the fine.
 - a. Each hour of community service will be valued at the current State minimum wage amount to pay the fine.
 - b. In imposing such a community service obligation, the Tribal Council will weigh the totality of the circumstances, including the gravity of the violation and past violations by the offender, if any.
 - c. The Planning Board will monitor the offender's community service hours and whether or not the obligation has been satisfactorily completed. In the event that, without good cause, the offender has not satisfactorily completed the community service obligation within one year of imposing the obligation, the offender will be subject to a civil fine equivalent to the number of hours remaining in the obligation.

Section 10.8 This Ordinance may also be enforced by any appropriate equitable action, such as an order to cease and desist any construction, development, or other activity that violates this Ordinance, Tribal Zoning Map, or regulations promulgated thereunder.

LEGISLATIVE HISTORY

This Chapter was originally adopted as the Smith River Rancheria Land Use Ordinance on September 30, 2002 (Ordinance 02-06). The ordinance was amended by Resolution 04-29 on April 27, 2004 (amending section 2.1 to have the Planning Board consist of the Tribal Council as reflected herein.)