

TRIBAL ORDINANCE 5

Chapter 9.20

APPEAL OF LAND USE DECISIONS

Sections:

9.20.010	Title.
9.20.020	Purpose.
9.20.030	Definitions.
9.20.040	Appeals.
9.20.050	Tribal Council action on appeals.

9.20.010 Title.

The ordinance codified in this chapter shall be titled and quoted as the “tribal land use appeal ordinance.” (Ord. 5 Am. 1 § 1 (part), 1991)

9.20.020 Purpose.

It is the purpose of this chapter to establish and define procedures whereby the Tribal Council of the Agua Caliente Band of Cahuilla Indians will receive and consider the appeal of an appellant, as such party is hereinafter defined, who is aggrieved by a final decision of a tribal land use agent which affects the planning, zoning, development, or use of Indian trust land within the exterior boundaries of the Agua Caliente Indian Reservation, and, after consideration of said appeal, will affirm, modify, or reverse the decision of said tribal land use agent which is the subject of the appeal, all pursuant to the various land use contracts between the Tribe and its tribal land use agents. (Ord. 5 Am. 1 § 1 (part), 1991)

9.20.030 Definitions.

For the purpose of carrying out the intent of this chapter, words, phrases, and terms shall be deemed to have the meaning ascribed to them in the following paragraphs covering definitions.

When not inconsistent with the context, words used in the present tense include the future; words in the singular include the plural; and those in the plural number include the singular; words in the masculine gender include the feminine; and those in the feminine gender include the masculine; “or” includes “and” and “and” includes “or.” The word “shall” is mandatory; the word “may” is permissive.

“Appellant” means and includes any individual(s) or entity aggrieved by a final decision of a tribal land use agent affecting the planning, zoning, or development of trust land located within the Agua Caliente Indian Reservation who is: (1) a member of the Agua Caliente Band of Cahuilla Indians; (2) a member or a current Tribal Council of the Agua Caliente Band of Cahuilla Indians; (3) a holder of a beneficial or possessory interest in Indian trust land within the boundaries of the Agua Caliente Indian Reservation, including but not limited to heirs, devisees, or successors in interest to original allottees; or (4) the lessee or authorized agent of an individual(s) described in subsections (1), (2), or (3) of this definition.

“Governing body” means the governing body of a tribal land use agent. In the case of a tribal land use agent which is an incorporated city, the “governing body” is that city’s city council. In the case of Riverside County, the “governing body” is that county’s board of supervisors.

“Indian Planning Commission” means the planning commission appointed by the Tribal Council, Agua Caliente Band of Cahuilla Indians.

“Indian trust land” means any real property, including water rights, belonging to the Agua Caliente Band of Cahuilla Indians, or to any member of said Band, that is held in trust by

the United States or is subject to a restriction against alienation imposed by the United States, as well as any structures or improvements erected or maintained on such realty.

“Planning commission” means the planning commission of a tribal land use agent.

“Tribal council” means the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

“Tribal land use agent” means a local government, whether a city or a county or similar entity existing under the law of the State of California which has entered into a land use contract with the Tribe. At the present time, the Tribe’s tribal land use agents are (1) the City of Palm Springs under a contract (with amendments) approved by the Assistant Secretary of the Interior on May 13, 1987, (2) the City of Cathedral City under a contract (with amendments) approved by the Assistant Secretary of the Interior on May 13, 1987, and (3) Riverside County under a contract approved by the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs of the U.S. Department of the Interior on October 7, 1989.

“Tribe” means the Agua Caliente Band of Cahuilla Indians. (Ord. 5 Am. 1 § 1 (part), 1991)

9.20.040 Appeals.

A. Appealable Matters. Notwithstanding any provision of the zoning ordinance or similar enactment of any tribal land use agent to the contrary, the Tribal Council on appeal may affirm, modify, or reverse any decision of the governing body in the following matters relating to the use, proposed use, or development of Indian trust land:

1. Building and utility permits;
2. Changes of zone;

3. Variances from applicable zoning requirements;

4. Conditional use permits;

5. Planned development district permits;

6. Tentative and final tract and parcel maps;

7. Changes or amendments to the general plan, or to the zoning ordinance of the tribal land use agent;

8. Enforcement of zoning and building codes;

9. Interpretation of state and federal environmental regulations; and

10. Related matters to the above.

B. Form and Period for Filing Appeals.

1. Appeals from a final decision of a governing body must be initiated by an appellant by the appellant filing in triplicate a notice of appeal form, as prescribed by the Tribal Council, which is completely filled out.

2. The notice of appeal must be filed in the office of the Tribal Council within a period of ten (10) days from the date of receipt by an appellant of the written decision of the governing body being appealed, and said notice being accompanied by a filing fee of two hundred fifty dollars (\$250.00), in cash, personal check, cashiers or certified check, money order, or bank draft, payable to the Tribe. Unless the appellant can demonstrate to the contrary to the satisfaction of the Tribal Council, receipt of such a written decision by an appellant shall be deemed to have occurred three days after the date appearing on the face of said written decision.

3. The notice of appeal shall clearly identify the facts and circumstances which, in the opinion of the appellant, indicate error or abuse of discretion by the governing body in the matter on appeal, and wherein the modification or reversal of the governing body’s decision would conform to acceptable plan-

ning and zoning standards, and assist in promoting public health, safety, convenience and general welfare.

4. Within a period of thirty (30) days of the date of filing a notice of appeal, the appellant of record thereon shall file, in the office of Tribal Council, the following informational documents:

a. A complete duplicate copy of the record and material previously considered by the governing body, including maps, exhibits, photographs, reports, etc.;

b. Transcripts of any and all proceedings before the governing body, including study sessions, at which the subject matter on appeal was considered or discussed. A certified copy of the governing body's minutes will be acceptable, in lieu of stenographic transcripts, provided that such minutes are in sufficient detail to demonstrate that all points raised by the appellant were thoroughly understood by said governing body;

c. A written statement by the appellant indicating where, in his or her opinion, the material required in subsections (B)(4)(a) and (b) of this section, supports the modification or reversal of the decision of the governing body. This written statement may be of any length the appellant desires, but shall be accompanied by a one-page summary thereof if the length of the principal statement exceeds three pages.

5. Any notice of appeal, or duplicate copies of the record, transcripts or minutes, and the statement by appellant, not filed within the time limits specified in subsections (B)(2) and (4) of this section, shall be dismissed by the Tribal Council with notice being sent to the appellant and the governing body of such action and the reason therefor. The time in which any act provided by this chapter is to be done shall be computed by

excluding the first day and including the last day, unless that last day falls on a day on which the offices of the Tribal Council and Bureau of Indian Affairs, now located at 901 Tahquitz Canyon Way, Palm Springs, California, are not open for regular business, in which case the last day for performing such an act shall be the first day after that last day when the offices of the Tribal Council and the Bureau of Indian Affairs are open for regular business. (Ord. 5 Am. 1 § 2, 1991)

9.20.050 Tribal council action on appeals.

A. Referral and Study. When an appeal is complete and filed in full compliance with the provisions of Section 9.20.040(B), the Tribal Council may refer said appeal to the Tribal planning consultant, and to the Indian Planning Commission for report or comment, except as follows:

1. When the Tribal Council determines that additional specialized studies are desirable to resolve the issues of an appeal, said Tribal Council may direct the appellant to provide additional data and conclusions from qualified experts in particular fields, and within a period of sixty (60) days of the date of such direction, with said appellant bearing the full and total cost of such additional data and conclusions.

2. The Tribal planning consultant and the Indian Planning Commission shall have the benefit of review of additional specialized studies, prior to submitting final reports or comments to the Tribal Council.

B. Formal Consideration.

1. The Tribal Council is not a "public agency," or a "quasi-public agency." However, for purposes of this chapter, after receipt of the final report and comment of the tribal planning consultant and the Indian Planning

Commission, said Tribal Council shall schedule and attend at least one joint public meeting with the governing body whose final decision is being appealed, at which time the appellant, the appellant's counsel or representative may be heard, and where comments of the general public on the issues may also be heard, provided that such public comment supplies new and pertinent information not previously included in the governing body's record. Comments of the general public shall be subject to reasonable restrictions which might be imposed by the Tribal Council to limit the length of the meeting and to avoid repetition of information already in the record.

2. The governing body shall cause to be published the date, time, place, and purpose of the joint public meeting with the Tribal Council, at least one time in a newspaper of general circulation in the area of jurisdiction of the tribal land use agent, and at least ten (10) days prior to the date of said meeting.

C. Decision by Tribal Council. The Tribal Council shall make a decision, either affirming, modifying, or reversing the prior decision of the governing body on appeal, either at the required joint public meeting with the governing body, or within a period of thirty (30) days thereafter.

1. The decision of the Tribal Council shall be in writing, and effective on the date thereof, with copies being mailed to the appellant, and to the affected governing body.

2. Any decision of the Tribal Council which modifies or reverses the previous decision of the governing body on appeal shall specify wherein there was error or abuse of discretion on the part of said governing body, and wherein such modification or reversal will conform to acceptable planning and zoning standards, and promote public health, safety,

convenience and general welfare through productive use of Indian trust land.

3. In proper cases, the Tribal Council decision on an appeal may include conditions affecting use, and development of the Indian trust land involved.

4. The decision of the Tribal Council shall be final on any appeal from a decision of the governing body of a tribal land use agent. Thereafter, any permits or other similar entitlements or measures necessary to the use of the land in accordance with the decision of the Tribal Council shall be issued by the tribal land use agent. (Ord. 5 Am. 1 § 3, 1991)