

TITLE X. LAND USE AND BUILDING

Chapter 1. Handicap Accessible New Construction

IT IS RESOLVED THAT all new construction of the Tribe be designed and constructed in a manner that is handicap accessible whenever required by law and even if not required by law wherever physically and financially feasible.

(Source: WOS 1995006, April 9, 1995)

Chapter 2. Authorization of Traditional Activities on Osborne Road Property

The LTBB Tribal Council supports and authorizes traditional Indian activities on the tribal land located on Osborne Rd. Groups which have scheduled activities on the land may set the criteria for participation on events they hold. Groups intending to use the property must contact the tribal office which shall maintain a calendar of scheduled events. Scheduling guidelines shall be developed as necessary and these guidelines must be presented to and approved by the Tribal Council.

(Source: WOS 1995014, September 24, 1995)

Chapter 3. Zoning

10.301 SHORT TITLE AND PURPOSE

- A. Short Title.** This Statute may be cited as the “Zoning Statute.”
- B. Purpose.** The purpose of this Statute is to provide for the regulation of land use; the structures, appurtenances, additions and decorations which may accompany them; and other developmental characteristics which may have an effect upon the public health, safety, and general welfare.
- C. Repeal of Prior Statute.** This Statute repeals and replaces the Land Use Regulation enacted on June 22, 1997, being Waganakising Odawak Statute 1997007.

10.302 EXISTING USES OF LAND AND BUILDINGS

The lawful use of any dwelling, building or structure, and of land or premises as existing and lawful at the time of enactment of this Statute may be continued at the discretion of the owner thereof even though such use does not conform with the provisions of this Statute.

(Source: WOS 2001-13, October 21, 2001, Section II)

10.303 DEFINITIONS

The following definitions of word use shall apply:

- A. Words used in the present tense shall include the future.
- B. Words used in the singular number shall include the plural number and the plural the singular.
- C. The word "**shall**" is mandatory and not discretionary.
- D. The word "**may**" is permissive.
- E. The word "**lot**" shall include the words "piece", "parcel" and "plot".
- F. The phrase "**used for**" shall include the phrases "maintained for" and "occupied for".
- G. The phrase "**designed for**" shall include the phrases "arranged for" and "intended for".
- H. All "**measured distances**" shall be to nearest foot. If a fraction is one-half foot (½) or less, the next full number below shall be taken.
- I. The words "**dwelling**", "**family dwelling**", "**2 family dwelling**", "**multiple dwelling**", "**building**", "**house**", "**premises**", or "**lot**" as used in this Statute shall be construed as if followed by the words "or any part thereof".
- J. "**Accessory Building**" An accessory building is a subordinate building situated upon the same lot as the main building the use of which is incidental to the main building.
- K. "**Accessory Use**" An accessory use is a use subordinate and customarily incidental to the main use on a lot.
- L. "**Aircraft Landing Area**" Any premises which are used or made available for the landing or takeoff of aircraft, including premises which are classified as a restricted landing area as contemplated by the rules and regulations promulgated by the Federal Aeronautics Administration, and including any appurtenant areas which are used or suitable for use for buildings or facilities incidental to aircraft services.
- M. "**Alley**" A narrow thoroughfare upon which the rear of premises generally abut or upon which service entrances of buildings abut, and which is not generally used as a thoroughfare by both pedestrians and vehicles, or which is not used for general traffic circulation, or which is not in excess of 30 feet in width at its intersection with a street.
- N. "**Alternations**" Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to here-in as "altered" or "reconstructed".
- O. "**Apartments**" A suite of rooms or a room in a multiple-family building arranged and

intended for a place or residence of a single-family or group of individuals living together as a single house keeping unit.

P. “Basement” That portion of a building which is partly or wholly below grade but is so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story.

Q. “Bed and Breakfast” A bed and breakfast facility is a dwelling licensed to serve over night guests in a residence for a fee. Such a facility shall be owner occupied with the owner operating the facility as proprietor.

R. “Building” Any structure, either temporary or permanent, having a room supported by columns or walls, and intended for the shelter or enclosure of persons, animals, chattels or property of any kind.

S. “Building Height” The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and ridge for gable, hip and gambrel roofs. Where a building height is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

T. “Building Existing” An "existing" building is any building actually constructed or the construction of which is started previous to the effective date of this Statute; provided that the construction of any such building continues uninterruptedly and is completed within 6 months from such date.

U. “Building Line” A line formed by the face of the building. A minimum building line is the same as the front setback line.

V. “Club” A non profit organization of persons for the promulgation of culture, sports, arts, sciences, literature, politics or the like.

W. “Comprehensive Plan” The Comprehensive Plan for the Little Traverse Bay Bands of Odawa Indians as may be amended or updated, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and other physical development features.

X. “Convalescent or Nursing Home” A structure with sleeping rooms where persons are housed and furnished with meals, nursing and medical care.

Y. “Development” The construction of a new building or other structure, on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

Z. “District” Any section within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation, or otherwise within LTBB’s jurisdiction, where the zoning

regulations are uniform under the laws of LTBB.

AA. “Drive-In” A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.

BB. “Dwelling” A building or portion thereof designed or used for residential occupancy, but not including house trailers, mobile homes, hotels, motels, boarding and lodging houses, tourist courts or tourist homes.

CC. “Dwelling, Multiple” A building designed for or occupied by three or more families.

DD. “Dwelling, Single-Family” A building designed for or occupied by one family.

EE. “Dwelling, Two-Family” A building designed for or occupied by two families.

FF. “Erected” Built, constructed, altered, reconstructed, moved upon, or any "physical" operations on the premises which are required for construction, excavation, fill, drainage, and the like, shall be considered a part of erection.

GG. “Essential Services” The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface, or overhead; gas, electrical, steam, fuel or water transmission or distribution system, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, and similar equipment in connection herewith, but not including buildings, which are necessary for the furnishing of adequate service by such utilities or municipal departments for the general health, safety or welfare.

HH. “Excavation” Any breaking of ground, except common household gardening, ground care, and soil tilling related to agricultural production or tree plantations.

II. “Family” One or two persons or parents, with their direct lineal descendants, dependents, and adopted children (and including the domestic employees thereof) together with not more than two persons not so related, living together as a single housekeeping unit.

JJ. “Farm” A "farm" includes structures, facilities and lands for carrying on of agricultural activity or the raising of livestock or small animals as a source of income.

KK. “Floor Area, Usable” For the purpose of computing parking requirements, usable floor area is that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons clients or customers. Floor area used or intended to be for the storage or processing of merchandise, hallways or for utilities or sanitary facilities shall be excluded for the computation of usable floor area.

LL. “Garage, Private” Accessory building space designed or used for the storage of motor-driven vehicles.

MM. “Gasoline Service Station” A place primarily operated and designed for the dispensing, sale or offering for sale of motor fuels and other petroleum products, which may include a repair garage, together with the sale of accessories. Such site may also include a convenience store and/or restaurant if appropriate permits are obtained.

NN. “Grade” For the purpose of regulating the number of stories and the height of buildings, the building grade shall be the level of the ground adjacent to the walls of the building. If the ground is not level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

OO. “Greenbelt, Screening” A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Statute.

PP. “Greenbelt, Shoreline” When bordering bodies of water, an undisturbed area of land paralleling the water's edge to a depth of the required zoning setback distance if not otherwise stipulated, which is retained in a natural condition and is essentially void of any structural improvements. Beaches and/or vegetated areas shall be defined as shoreline greenbelts.

QQ. “Home Occupation” Where permitted in a district, a business use of a residential premise by the occupant that may be carried on in accordance with the restrictions contained in this Statute and other applicable law or regulation.

RR. “Hotel” See definition "Motel, Motor Inn or Hotel".

SS. “Junk / Salvage Yard” An open area where waste, used or second hand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled including, but not limited to scrap and other metals, paper, rags, rubber tires, and bottles. A “junk/salvage” yard includes automobile wrecking yards and includes any area of more than two hundred (200) square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

TT. “Kennel, Commercial” A dwelling unit or a nonresidential building, structure, parcel of land or portion thereof in which (3) three or more dogs, cats or other household domestic animals are maintained, boarded, bred, cared for or kept for the purpose of sale, or temporary boarding but not including veterinary care or treatment.

UU. “Loading Space” An off-street space for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

VV. “Lot Coverage” That portion of the lot occupied by main and accessory buildings.

WW. “Lot Depth” The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

XX. “Lot Lines”

1. Front lot line: is that line which creates the abutting street right of way line (in the case of a corner lot the front line shall be that line which the front of the house faces).
2. Rear lot line: that line which is opposite the front line.
3. Side lot line: any lot line other than the front or rear lot line.

YY. “Lot of Record” A lot which is part of a subdivision, the map of which has been recorded in the office of the Register of Deeds of the Bureau of Indian Affairs; or a parcel of land, the deed of which was recorded in the office of the Register of Deeds of the Bureau of Indian Affairs.

ZZ. “Lot Width” Lot width is the distance from one side lot line to the other side lot line measured at the minimum building setback permitted in this Statute.

AAA. “Lot, Zoning” A contiguous tract of land which at the time of filing for a building and zoning permit is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under simple ownership or control. A zoning lot may not coincide with a lot of record, but may include one or more lots of record.

BBB. “Main Building” A building containing the principal use of the lot upon which it is situated.

CCC. “Master Plan” See Comprehensive Plan.

DDD. “Mobile Home” Any structure designed and pre-manufactured as a complete and transportable housing unit to be used as a place of residence for one family. Mobile homes are structures legally transportable over a highway, but the term shall not include licensed travel trailers. The term "mobile homes" shall include double wide mobile homes, but shall exclude modular homes or pre-manufactured homes which are installed with a permanent foundation and which do not come with a steel frame attached.

EEE. “Mobile Home-Permanent” Mobile Homes shall be considered permanent dwellings when the unit is mounted on a continuous masonry foundation or on a foundation of solid masonry pilings as specified elsewhere in this Statute. Further, the permanent mobile home shall meet the minimum floor area requirements for one-family dwellings, be securely anchored to the ground, and be taxable as real estate if such taxes be assessed.

FFF. “Mobile Home-Temporary” Any unit other than a travel trailer or permanent mobile home having no foundation; but which may be equipped with wheels or other devices for transporting from place to place.

GGG. “Mobile Home Park” A parcel or tract of land under the control of a person upon which three (3) or more mobile homes are located on a continual non recreational basis and which is

offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, sheet, equipment or facility used or intended for use incident to the occupancy of a mobile home and which is not intended for use as a temporary trailer park.

HHH. “Motel, Motor Inn or Hotel” A building or part of a building with a common entrance or entrances in which the dwelling units or rooming units are used primarily for transient occupancy. A hotel or motor inn may contain a restaurant, cocktail lounge and conference center facilities.

III. “Non-Conforming Use” A building, structure or use of land lawfully existing at the time of enactment of this Statute, and which does not conform to the regulations of the District or Zone which it is situated.

JJJ. “Nuisance” The word "nuisance" shall be held to embrace whatever is dangerous to human life or detrimental to health; or any dwelling or building which is over-crowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewerred, drained, cleaned or lighted in reference to its intended or actual use; or whatever renders the air or human food or drink unwholesome.

KKK. “Nursery, Plant Materials” A space, building or structure or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits, vegetables, gifts, lawn furniture and gardening or farm equipment.

LLL. “Official Map” A map prepared by or in consultation with the Zoning Administrator and the Planning Department, and approved by the Tribal Council, that depicts LTBB’s reservation and delineates the land use districts defined and located by the Tribal Council under this Statute.

MMM. “Off Street Parking Lot” An area of definite length and width exclusive of drives, aisles or entrances giving access thereto and fully accessible for the storage or parking of permitted vehicles.

NNN. “Parking Space” A parking space is an accessible either garage or surfaced area, not less than 10 feet in width and 20 feet in length, exclusive of area required for ingress or egress, which can be used at all times for parking a motor vehicle.

OOO. “Person” An individual, partnership, association, trust or corporation or any other legal entity or combination thereof.

PPP. “Planned Unit Development (PUD)” A residential or commercial development guided by a master design plan in which one or more of the zoning or subdivision regulations, shall be permitted to be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with guidelines shown herein.

QQQ. “Principle Use” The primary or chief purpose for which the lot is used.

RRR. “Public Utility” A public utility is any person, firm, corporation, municipal department or board duly authorized to furnish or furnishing under regulation, to the public, electricity, gas, steam, communication, transportation, drainage or water.

SSS. “Recreational Vehicle” A vehicle primarily designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motive power or a vehicle mounted on or drawn by another vehicle.

TTT. “Recreation Camps, Lodges and Resorts” A recreational facility normally operated for gain, which provides overnight lodging and recreational activities including but not limited to golf, skiing, dude ranching, recreational farming, snowmobiling, pack trips, and boating.

UUU. “Restaurant” A commercial establishment whose primary business is the preparation of food for immediate consumption, either on site or carry-out.

VVV. “Retail Store” Commercial establishment for public retail sale of goods, related services, food or beverage, including but not limited to convenience stores. A retail store may sell perishable items, tobacco products or alcoholic beverages if applicable permits are obtained.

WWW. “Roadside Stand” An accessory and temporary farm structure operated for the purpose of selling local agricultural products raised or produced by the proprietor and his employees on the same premises.

XXX. “Room” For the purpose of determining lot area requirements and density. A room is a living room, dining room, bedroom equal to at least eighty (80) square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, hallways and storage.

YYY. “Service Based Businesses” Commercial establishments who primarily provide services, and limited related retail items.

ZZZ. “Setback” The distance required to obtain front, side or rear yard open space provisions of this Statute.

AAAA. “Shopping Center” A group, cluster or complex of retail stores within a single architectural plan, and occupying a site under single ownership, management or control. At least three (3) retail stores and services, so arranged or planned, shall qualify as a shopping center for zoning purposes.

BBBB. “Sign, Accessory” A sign which is accessory to the principal use of the premises and located on the same lot as the principal use.

CCCC. “Story” That part of a building, except a mezzanine and/or basement, between the surface of one floor and the surface of the next floor, or if there is no floor above, than the ceiling next above. A story shall not be counted as a story when more than fifty (50) percent, by cubic

content, is below the grade level of the adjoining ground.

DDDD. “**Story, Half**” An uppermost story lying-under a sloping roof having an area of at least two hundred (200) square feet with a clear height of seven feet six inches (7'6"). For the purposes of this Statute the useable floor area is only that area having at least four feet (4') clear height between floor and ceiling.

EEEE. “**Street**” A public dedicated right-of-way, affording the principal means of access to abutting property (excludes alleys).

FFFF. “**Structure**” Anything constructed or erected, the use of which requires location on the ground or attachment something having location on the ground.

GGGG. “**Temporary Use of Building**” A use or building permitted to exist during periods of construction of the main building or use, or for special events.

HHHH. “**Travel Trailer and Camper**” A trailer coach, motor home, tent camper, demountable camper or unit designed as a vacation unit for short-term seasonal occupancy, which measures eight (8) feet or less in width and designed to be operated on highways.

IIII. “**Use, Reasonable**” A proposed use is "reasonable" when it would be harmonious, compatible, appropriate, would not impinge unreasonably on the value or use of nearby properties, and would not impair sound communal development as and where proposed to be established. An existing use is "reasonable" when it is harmonious, compatible, and appropriate as and where established, does not impinge unreasonably on the value or use of nearby properties, and does not impair sound communal development. Uses which are not "reasonable" are "unreasonable." No use shall be deemed "reasonable" if its establishment or actual conduct is unlawful under the statutory or common law of the Little Traverse Bay Bands of Odawa Indians.

JJJJ. “**Yard**” A yard is an open space, unoccupied and unobstructed from the ground upwards, except as otherwise provided herein, and on the same lot with a building. The measurement of a yard shall be the minimum horizontal distance between the lot lines and the building or structure.

1. Required Yard: That portion of any lot on which the erection of a main building is prohibited.
2. Front Yard: A yard on the same lot with a building between the front line of the building and the front lot line and extending from one side lot line to the other side lot line.
3. Rear Yard: A yard on the same lot with a building between the rear line of the building and the rear lot line and extending from one side lot line to the other side lot line.
4. Side Yard: A yard on the same lot with a building between the side lot line and

the nearest side line of the building and extending from the rear yard to the front yard.

(Source: WOS 2001-13, October 21, 2001, Section III)

10.304 CLASSIFICATION AND DESCRIPTION OF LAND USE DISTRICTS

To achieve the aims and purposes set forth above, any lands under the jurisdiction of the Little Traverse Bay Bands of Odawa Indians are hereby divided into the following six districts:

A. Low Density / Suburban Residential. The purpose of this district is to maintain certain areas within the Tribe's zoning jurisdiction as primarily agricultural and sparsely developed. Low Density is defined as no more than one dwelling unit per every ten acres of land.

B. Medium Density Cluster Residential. It is the purpose of the Medium Density Cluster Residential District to provide for the most efficient use of limited residential land use resources while also providing open space, access to forested and riparian areas, and recreational opportunities for residents. This district has among its goals the concentration of residential areas within a larger parcel; establishment of areas for recreation, natural preservation, cultural use, and scenic views; and designation of nearby areas for multiple light density commercial uses tailored to the needs of the development. In this context, Medium Density is defined as the range of one dwelling unit per every two to three acres of land.

1. Uses permitted by right. The following uses are permitted by right, and require only a zoning permit and review by the Zoning Administrator for height and bulk requirements:

- a.** Detached single family homes, meeting the BOCA standards for construction, of not less than 960 square feet in area, not including porches and appurtenances.
- b.** Duplex-type two family homes, meeting the BOCA standards for construction, of not less than 760 square feet in area, not including porches and appurtenances.
- c.** Community centers and other quasi-governmental buildings, directly related in purpose to the development and residents thereof.
- d.** Sweat lodges and other traditional structures of a transient use.
- e.** Home Occupations that do not involve signs, customers coming to the residence, or any outdoor activity not typical in a residential area.

2. Uses permitted by special review. The following uses are permitted as a general rule, but only after a review by the Zoning Administrator to ensure compatibility with existing uses and limitations on any detrimental effects from the proposed use.

- a. Business and industry located in designated areas.
- b. Planned or mixed use developments.
- c. Government buildings and operations.
- d. Churches.
- e. Recreational facilities.
- f. Farming.
- g. Home occupations that involve a sign, customers coming to the residence, or any outdoor activity not typical in a residential area.
- h. Other similar uses consistent with the management objectives and purposes set forth in this Section.

3. Lot, setback, and other dimensional requirements. Since it is the intent of this district to promote compact, yet secluded residential development, the dimensional requirements in this section have been selected to fulfill these contradictory elements in the most feasible manner.

- a. Minimum overall development size is 20 acres.
- b. Minimum individual lot size is 17,000 square feet. This assumes an overall density of not more than .5 dwelling units per acre.
- c. Minimum front yard (setback) is 5 feet.
- d. Minimum front yard setback is 75 feet.
- e. Minimum side yard clearance is 10 feet.
- f. Minimum rear yard setback is 35 feet.
- g. Minimum lot width when abutting a residential street is 75 feet.
- h. Maximum building height is two stories or 35 feet, consistent with equipment capabilities of local fire fighting agencies.
- i. One accessory building is permitted, with an area not to exceed 1000 square feet, or one half the dwelling unit size, whichever is less. The sidewall of said accessory building shall not exceed 10 feet in height. Garages for the storage of automobiles are considered accessory buildings. Accessory buildings are not permitted in the required yard set back area.

j. Land within the right-of-way of public roads shall be included in all density calculations.

4. General Requirements.

a. Public water and sewerage facilities shall be available to serve the cluster subdivision.

b. Common "open space" shall not be less than fifteen percent (15%) of the gross acreage of any tract submitted for cluster subdivision.

c. A maximum of fifty percent (50%) of the required open space may be steep slopes, streams, ponds, watercourse, and flood plain.

d. The land derived from reduction of lot sizes shall be provided and maintained as "open space", "traditional areas" or "recreational areas".

e. Lots shall not be further subdivided and the Record Plat shall so indicate.

f. All lots shall be designed and located to minimize potential environmental degradation of the natural resources.

g. Access arrangements to open spaces shall be carefully designed and located to enable perpetual maintenance and accessibility.

h. No lot shall be created or designed in which the depth is more than 5 times the width.

i. The maximum coverage of any lot by impermeable surfaces, including structures, pavement, and sidewalks, shall be 25%.

C. Multi-Family / Mixed Residential. The purpose of this district is to provide an area for multi-family apartment buildings, single family and duplex dwelling units within the same neighborhood.

D. Forest / Recreational / Conservation. The purpose of these districts is to preserve lands for hunting, gathering, recreation, and the conservation of plants, animals and general genetic diversity. There shall be no dwelling units or commercial structures or development within this district. Only Tribal governmental developments consistent with the purposes of this district with minimal environmental impact, such as small biological services buildings, trails and minimal roads, are permitted in these districts.

E. Commercial. The purpose of this district is to provide sites for the development of Tribal commercial enterprises, and other businesses owned by tribal members or others when the Tribal Council determines through official action that the location of such non-member

businesses within this district is in the best interests of the Tribe.

F. Governmental Ceremonial / Outdoor Assembly. The purpose of this district is to provide locations for governmental administration and services, Tribal ceremonies and gatherings. Permissible structures in this district shall include buildings to house Tribal government and administration, health, education and welfare. The development of permanent outdoor seating, amphitheaters and structures used for ceremonial purposes shall also be permissible in this district under the direction and approval of the Tribal Council.

(Source: WOS 2001-13, October 21, 2001, Section IV; Section 4.02(3)(d) amended by WOS 2005-08, July, 10, 2005)

10.305 BOUNDARIES OF LAND USE DISTRICTS

The boundaries of specific districts will be determined by the Tribal Council, and will be published on the Official Map.

(Source: WOS 2001-13, October 21, 2001, Section V)

10.306 ALLOWED BY RIGHT IN ALL DISTRICTS

Traditional ceremonial and outdoor structures utilized in traditional ceremonial and outdoor gatherings and for the purpose of siting traditional communal structures such as sweat lodges are allowed by right in all districts on members' own leasehold estates or fee lands. These structures are not to be utilized as permanent dwelling units. Their erection may be permanent, as long as occupancy is of a temporary nature for a specific, traditional purpose.

(Source: WOS 2001-13, October 21, 2001, Section VI)

10.307 ADMINISTRATION AND VIOLATIONS

- A.** The Zoning Administrator shall be hired or assigned by the Tribal Administrator.
- B.** The Zoning Administrator shall record all nonconforming uses existing at the effective date of this Statute.
- C.** The Zoning Administrator shall under no circumstances be permitted to make changes to this Statute or to vary the terms of this Statute in carrying out his/her duties as Zoning Administrator. Any and all modifications to this Statute shall be approved by the Tribal Council prior to their taking effect.
- D.** The Zoning Administrator shall not refuse to issue a permit when conditions imposed by this Statute are complied with by the applicant despite violations of contracts, such as covenants or private agreements, which may occur upon the granting of said permit.
- E.** Other Duties. The Zoning Administrator, and such deputies or assistants as are assigned

shall enforce this Statute and any subsequent zoning regulations adopted by the Tribe and in addition thereto, and in furtherance of such authority, shall:

1. Register all nonconforming uses when they are identified.
2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Statute.
3. Issue violation notices that require compliance within ten (10) days, and advise suspected violators of right of appeal.
4. Require that all construction or work of any type be stopped when such work is not in compliance with this Statute.
5. Forward, to the Tribal Council, applications for amendments to the Zoning Statute text or map and special uses.
6. Forward, to the Zoning Board, applications for appeals and variances.
7. Forward, to the Zoning Board, applications for temporary buildings, structures and uses of land.
8. Review all cases of encroachment into required yards.
9. Interpret the Zoning Regulations when questions arise, subject to appeal and review by the Zoning Board if requested.
10. Determine which uses, though not contained by name in a zoning district list of permitted uses, are of the same general character and permit their establishment.
11. Initiate an examination of the administrative record of variances and make a report to the Zoning Board and Tribal Council not less than once a year.
12. Maintain permanent and current records of this Statute, including but not limited to maps, amendments, variances, conditional uses, and interim use permits.
13. Receive, file and forward all applications for amendments, variances, conditional uses, interim uses, or other matters to the designated official bodies.
14. Issue citations in the name of the Tribe to prevent, to restrain, to correct, or to abate a violation or threatened violation.
15. Provide and maintain public information relative to matters arising out of this Statute.
16. Conduct inspections of land, buildings, or structures at reasonable times,

determine compliance with and enforce the provisions of this Statute.

17. Issue permits as required by this Statute.

(Source: WOS 2001-13, October 21, 2001, Section VII)

10.308 ZONING PERMIT

A. Before proceeding with the erection, alteration, repair, moving, or removing of any building or part thereof, an owner or his authorized agent shall obtain a zoning permit from the Zoning Administrator. The applicant for a zoning permit must file with his request a set of plans and written specifications sufficient to clearly and fully indicate the nature of the contemplated work and the kind and quality of materials to be used therein, together with an estimated cost. Drawings shall clearly indicate the size of structural members, walls and openings, the position of the building on the site with reference to property and street lines and adjacent buildings, and such other information as may be necessary to provide for the enforcement of these regulations. It shall be the duty of all lot owners and/or lessees to have accurately located all corners and boundaries of their property prior to building thereon.

B. A record of such applications and plans shall be kept in the office of the Zoning Administrator for such period of time as the Tribal Council deems necessary.

C. When the plans submitted have been found to conform with the requirements of this Statute, the Zoning Administrator shall issue a zoning permit. He shall inform the applicant that this zoning permit does not do away with the necessity for permits showing conformity with the Building Code, and other requirements of the Little Traverse Bay Bands of Odawa Indians, and that no construction shall be commenced until these other legal requirements have been fully met.

D. The Zoning Administrator shall inspect the building during construction and shall make a final inspection of all buildings after completion, before occupancy begins, upon receiving notice from the owner, contractor or his/her agent that said building is ready for such final inspection.

E. Use variances can only be granted by the Tribal Council. Dimension variances that do not exceed established limits by over 10% may be granted at the discretion of the Zoning Administrator if such variance would not negatively impact the interests of the tribe as described in this Statute. All other dimension variances can only be granted by the Zoning Board.

(Source: WOS 2001-13, October 21, 2001, Section VIII)

10.309 ZONING BOUNDARIES

Unless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, centerlines of street rights-of-way, water courses, ridges or rim rocks, or other readily recognizable or identifiable natural resources, or the extension of such lines.

(Source: WOS 2001-13, October 21, 2001, Section IX)

10.310 SITE PLANS AND ENERGY CONSERVATION GUIDELINES

A. Where required, site plans shall be prepared for submission to the Zoning Board. Contained on the site plan shall be scale drawings which locate buildings, streets, driveways, parking areas, utilities, power lines, landscaping, excavation, water wells, irrigation facilities, and all other physical structures or uses which physically change the land. Buildings and other improvements shall be located to minimize disturbance to existing natural land forms, trees, shrubs and other natural vegetation. For temporary uses, such as surface mining, an additional site plan shall accompany the application depicting the land reclamation plan.

B. Where practical, building construction, including homes, shall be designed and located to optimize energy conservation through solar access techniques. Consideration should be given to building orientation, window usage, landscaping, overhangs, shading devices, and use of skylights to provide natural lighting and heating.

(Source: WOS 2001-13, October 21, 2001, Section X)

10.311 COMMUNITY, SUBDIVISION AND HOMESITE DEVELOPMENT POLICY

The following Sections are intended to implement in part the following tribal policies: (1) Ensuring the orderly development of the Reservation. (2) Providing lands for tribal member homes.

A. Community, subdivision and Rural Housing Development Areas.

1. Development plans for community, subdivision, and rural housing areas established on the official zoning map shall be developed to provide homesites for tribal members on an orderly basis. The purposes of these plans are to encourage the orderly and efficient use of all Reservation lands; to protect public health and safety by controlling road and utility construction; to encourage design which compliments the Reservation's appearance and livability; to minimize conflicts between different land uses; to encourage cost-effective development conducive to energy efficiency in conservation; and to conserve range and agricultural lands.

2. All community, subdivision and rural housing plans shall be approved by the Tribal Council. Construction or development in accordance with an approved plan shall be a permitted use in the applicable zone.

3. Development plans may be required to include a firebreak area around the exterior boundaries of the planned area.

4. Subdivision and community names and street names shall be included in the plan to be approved by the Tribal Council.

5. Plans submitted to the Tribal Council shall include survey data and shall be shown on a scale drawing which identifies all streets, easements, lots, utility lines and lot sizes.

6. Submitted plans may include conditions relating to housing construction standards and conditions including color and height limitations needed to protect the Reservation's scenic resources, other requirements, controls and accessory building standards.

(Source: WOS 2001-13, October 21, 2001, Section XI)

10.312 ENFORCEMENT AND PENALTIES

A. Upon discovery of any nuisance as defined in Section III [WOTC 10.303], the Zoning Administrator shall issue a citation ordering abatement. If the responsible party fails to abate such nuisance, the Zoning Administrator shall submit the citation to the Tribal Prosecutor for enforcement in Tribal Court. Upon finding an existence of a nuisance as defined in Section III [WOTC 10.303], the Court shall order the nuisance abated. The Court is authorized to impose fines and/or jail time under its contempt powers if its orders are not complied with, and make such other orders as may be necessary to abate the nuisance.

B. The Zoning Administrator shall submit all other citations for violations of this Statute that cannot be resolved without action of the Court to the Tribal Prosecutor for enforcement in Tribal Court.

C. Any person who violates any provision of this Statute or who fails to comply with any of the regulatory measures or conditions of the Zoning Administrator or Zoning Board shall be subject to a civil fine not to exceed one hundred dollars (\$100.00). Each day such violation continues shall be deemed a separate offense.

(Source: WOS 2001-13, October 21, 2001, Section XII)

10.313 APPEALS

A. Any person who claims to be aggrieved by a decision of the Zoning Administrator may appeal such decision to the Zoning Board. Within fourteen (14) days of the challenged decision, the person must file a written appeal to the Zoning Board including at a minimum:

- 1.** A copy of the Zoning Administrator's decision being challenged;
- 2.** A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Zoning Board; and
- 3.** The relief requested from the Zoning Board.

The Zoning Board shall hear the appeal within sixty days (60) days of filing either during

a regular meeting or special meeting called for that purpose, and issue its written ruling within ten (10) days of such hearing. The person appealing cannot proceed with any non-permitted construction while the appeal is pending.

B. The person who appealed to the Zoning Board may appeal the decision of the Zoning Board to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Zoning Board's ruling. The Court shall only overturn the decision of the Zoning Board if it finds such decision to be clearly arbitrary, capricious, or otherwise not in accordance with this Statute or other applicable law.

(Source: WOS 2001-13, October 21, 2001, Section XIII)

10.314 ZONING BOARD

A. The Tribal Council shall appoint a Zoning Board consisting of three (3) LTBB Tribal members over eighteen (18) years of age. Members of the Zoning Board shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, one person shall be appointed to a one (1) year term, one person shall be appointed to a two (2) year term, and one person shall be appointed to a three (3) year term. All appointments thereafter shall be for three (3) year terms. There shall be a Chairperson of the Zoning Board, who shall be selected by the members of the Board from the Board members for a one year term. Upon enactment of this Statute, the Tribal Council shall serve as interim Zoning Board until the Zoning Board is appointed and sworn in.

B. Two members of the Zoning Board shall constitute a quorum.

C. Subject to the availability of funding and a budget approved by the Tribal Council, members of the Zoning Board may receive a stipend, mileage and expense reimbursement for attendance at properly called meetings at which a quorum is present.

D. The Zoning Board shall have the following duties:

- 1.** Rule on variance applications in accordance with Section 7.05 (6) of this Statute.
- 2.** Rule on applications for temporary building and uses in accordance with Section 7.05 (7).
- 3.** Aid the Zoning Administrator in interpretation of this Statute and any regulations that may be adopted pursuant to it.
- 4.** Hear and rule on appeals of decisions of the Zoning Administrator.

(Source: WOS 2001-13, October 21, 2001, Section XIV)

10.315 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2001-13, October 21, 2001, Section XV)

10.316 EFFECTIVE DATE

This Statute takes effect upon enactment [October 21, 2001].

(Source: WOS 2001-13, October 21, 2001, Section XVI)

Chapter 4. Building Code Adoption

10.401 PURPOSE

The purpose of this Statute is to protect and promote the health and safety of LTBB and its members through adoption of building, property maintenance, mechanical and safety codes. This Statute repeals and replaces Waganakising Odawak Statutes 1997008, 1997009, 1997010, 1997011, 1997012, and 1997013.

(Source: WOS 2002-02, April 21, 2002, Section I)

10.402 ADOPTION OF CODES

A. The following codes are on file in the offices of the Tribal Planning Department:

- 1.** International Building Code 2000;
- 2.** International Fire Code 2000;
- 3.** International Residential Code 2000;
- 4.** International Plumbing Code 2000;
- 5.** International Private Sewage Code 2000;
- 6.** International Mechanical Code 2000;
- 7.** International Fuel Gas Code 2000;
- 8.** International Energy Code 2000; and

9. International Property Maintenance Code 2000

B. General Fee Schedule: The fee for inspections under the Codes adopted hereunder shall be based on 6% of estimated project cost, or actual inspection costs plus indirect costs, whichever is less.

C. The Little Traverse Bay Bands of Odawa Indians adopts these Codes as Tribal law with the jurisdiction in each code inserted as Little Traverse Bay Bands of Odawa Indians, and the following modifications:

1. International Fire Code.

a. Section 109.3 Violations, page 11, paragraph 1, line 6: insert “civil infraction;” line 7: insert \$2500.00.

2. International Residential Code.

a. Section R301.2 regarding hurricane wind design standards is not applicable.

3. International Plumbing Code.

a. Section 106.6.2, Paragraph 1, line 3, Appropriate Schedule: insert “This schedule will be determined by the project.”

b. Section 106.6.3, Paragraph 1, Numeral 2, Fee refunds: insert “100%,” numeral 3: insert “100%.”

c. Section 108.4, Paragraph 1, line 7, Specify Offense: insert “Civil infraction,” line 8: insert “\$2500.00.”

d. Section 108.5, Paragraph 1, line 13, Amount: insert “\$250.00,” line 14: insert “\$5000.00”

4. International Private Sewage Disposal Code.

a. Section 106.4.2, Paragraph 1, Fee Schedule: The fee schedule is set out in Section II (B) of this Statute.

b. Section 106.4.3, Paragraph 1, numeral 2 and 3: insert “100% of the fee returned.”

c. Section 108.4, Paragraph 1, Line 7: insert “civil infraction,” line 8: insert \$100.00 for first offense and \$250.00 for second offense.

d. Section 108.5, Paragraph 1, line 13: insert \$1000.00, line 14: insert

\$10,000.00

e. Section 405.2.5, Paragraph 1, line 2: insert “start of construction,” line 3: insert “upon completion of construction.”

f. Section 405.2.6, Paragraph 1, line 6: insert “date of construction.”

5. International Mechanical Code.

a. Section 106.5.2, Paragraph 1, line 3, Fee Schedule of Mechanical Work): The fee schedule is set out in Section II (B) of this Statute.

b. Section 106.5.3, Paragraph 1, Specify Percentage: insert “100%” after numeral 2, and “75%” after numeral 3.

c. Section 108.4, Paragraph 1, line 7, Violations: insert “Civil infraction,” line 8: insert “\$2500.00.”

d. Section 108.5, Paragraph 1, line 13, Stop work orders: insert “\$250.00,” line 14: insert “\$5,000.00.”

6. International Fuel Gas Code.

a. Section 106.5.2, Paragraph 1, line 13, Appropriate Schedule: The fee schedule is set out in Section II (B) of this Statute.

b. 106.5.3, Paragraph 1, numeral 2 and 3, Fee Refunds: insert “100%”

c. 108.4, Paragraph 1, line 6: insert “Civil infraction,” line 7: insert “\$2500.00.”

7. International Electrical Code.

a. Section 404.2, Paragraph 1, line 4 (fee schedule) insert The fee schedule is set out in Section II (B) of this Statute.

8. International Property Management Code.

a. Section 103.6, Page 2, Paragraph 1, line 4: insert “Based on 6% of estimated project cost, or actual inspection costs plus indirect costs, whichever is less.”

b. Section 303.14, Page 10, Paragraph 1, line 1 (Date): insert “May 1st through September 31st.”

c. Section 602.3, Page 17, Paragraph 1, Line 5 (Date): insert “September 31st”

through May 15.”

d. Section 602.4, Page 17, Paragraph 1, line 3 (Date): insert “September 31st through May 15.”

(Source: WOS 2002-02, April 21, 2002, Section II)

10.403 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute or the Codes adopted hereunder is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute or Code adopted hereunder, the entirety of the balance of the Statute or Code to remain in full and binding force and effect.

(Source: WOS 2002-02, April 21, 2002, Section III)

10.404 EFFECTIVE DATE

This Statute takes effect upon enactment.

(Source: WOS 2002-02, April 21, 2002, Section IV)

Chapter 5. Site Plan Review

10.501 SITE PLAN REVIEW

Site Plan Review and approval of all development proposals listed below is required by the provisions of this Section. The intent of this Section is to provide for consultation and cooperation between the developer and the Planning Department so that both parties might realize maximum utilization of land and minimum adverse effects upon the surrounding land uses consistent with the requirements and purposes of this statute. Through the application of the following provisions, the attainment of the Comprehensive Plan of the Little Traverse Bay Bands of Odawa Indians (LTBB) will be assured and the LTBB community will develop in an orderly fashion.

(Source: WOS 2005-05, May 1, 2005, Section I)

10.502 SITE PLAN REVIEW IN USE DISTRICTS REQUIRED

A site plan shall be submitted to the Planning Department for approval of any use in the Low Density/Suburban Residential, Medium Density Cluster Residential, Multi-Family/Mixed Residential, Forest/Recreational/Conservation, Commercial, Governmental Ceremonial/Outdoor Assembly zones and shall be required in the following situations:

- A.** Any use or development for which the submission of a site plan is required by any provision of this statute.
- B.** Any development, except single-family platted residential, for which off-street parking areas are provided as required in this statute.
- C.** Any use in a multifamily or nonresidential district, lying contiguous to or across a street from a single-family residential district and/or use.
- D.** Any use except single-family residential which lies contiguous to a major thoroughfare or collector street.
- E.** All Special Land Uses (or conditional uses) in single-family districts such as, but not limited to: churches, schools, public facilities, and similar uses.
- F.** All single-family residential uses subject to the requirements of the - LTBB Subdivision statute if enacted.
- G.** All developments in wetlands or 100 year floodplains, including individual single family homes for which a permit is required by the Natural Resources Department.
- H.** All other developments in which ownership interests in land are transferred for the purpose of development of a physical structure.
- I.** All site condo and condominium subdivisions developed pursuant to applicable law.
- J.** For the purposes of this statute “licensed” or “registered” means licensed or registered with an appropriate Tribal, state, federal or local agency.

10.503 APPLICATION FOR SITE PLAN REVIEW

An application for Site Plan Review shall be submitted to the Planning Department. The detailed site plan presented for consideration shall contain all information required in this statute.

- A.** Each submission for Site Plan Review shall be accompanied by an application and site plan in the quantities specified in subsection five (5) below. The application shall at a minimum, include the following information:
 - 1.** The applicant's name, address, and phone number in full.
 - 2.** Proof of property ownership, and whether there are any options on the property, or any liens against it.
 - 3.** A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf.

4. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land), and the signature of the owner(s).
 5. The address and or parcel number of the property.
 6. Name and address of the developer (if different from the applicant).
 7. Name and address of the engineer architect and/or land surveyor.
 8. Project title.
 9. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided, and related information as pertinent or otherwise required by the statute.
 10. A vicinity map drawn at a scale of 1"=2000' with north point indicated.
 11. The gross and net acreage of all parcels in the project.
 12. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels.
 13. Project completion schedule/development phases.
 14. Written statements relative to project impacts on existing infrastructure (including traffic capacity of streets, schools, and existing utilities) and on the natural environment of the site and adjoining lands. (if formal impact statements are required, they would be stated here, or referenced).
- B.** The site plan shall consist of an accurate, reproducible drawing at a scale of 1"= 100' or less, showing the site and all land within 150' of the site. If multiple sheets are used, each shall be labeled and the preparer identified. Each site plan shall depict the following:
1. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines and monument locations.
 2. Existing topographic elevations at two (2) foot intervals, proposed grades and direction of drainage flows.
 3. The location and type of existing soils on the site and any certifications of borings.
 4. Location and type of significant existing vegetation.

- 5.** Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, floodplains and wetlands.
- 6.** Location of existing and proposed buildings and intended uses thereof, as well as the length, width, and height of each building and typical elevation views of proposed structures.
- 7.** Proposed location of accessory structures, buildings and uses, including, but not limited to, all flagpoles, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment, and the method of screening where applicable.
- 8.** Location of existing public roads, rights-of-way and private easements of record and abutting streets.
- 9.** Location of and dimensions of proposed streets, drives, curb cuts, and access easements, as well as acceleration, deceleration and passing lanes (if any) serving the development. Details of entryway and sign locations should be separately depicted with an elevation view.
- 10.** Location, design, and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing), fire lanes and all lighting thereof.
- 11.** Location, size, and characteristics of all loading and unloading areas.
- 12.** Location and design of all sidewalks, walkways, bicycle paths and areas for public use.
- 13.** Location of water supply lines and/or wells, including fire hydrants and shut off valves, and the location and design of storm sewers, retention or detention ponds, waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable.
- 14.** Location of all other utilities on the site including but not limited to natural gas, electric, cable TV, telephone and steam.
- 15.** Proposed location, dimensions and details of common open spaces and common facilities such as community buildings or swimming pools if applicable.
- 16.** Location, size and specifications of all signs and advertising features with cross-sections.
- 17.** Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.

18. Location and specifications for all fences, walls and other screening features with cross-sections.
19. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.
20. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.
21. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials, or hazardous materials as well as any containment structures or clear zones required by government authorities.
22. Identification of any significant site amenities or unique natural features.
23. Identification of any significant views onto or from the site to or from adjoining areas.
24. North arrow, scale and date of original submission and last revision.
25. Seal of the registered engineer, architect, landscape architect, surveyor, or planner who prepared the plan.

(Source: WOS 2005-05, May 1, 2005, Section II [original contains numbering error repeating section II])

10.504 SITE PLAN REVIEW AND APPROVAL AUTHORIZED

A. The Planning Department as specified in this Section, shall review and approve, review and approve with conditions, or review and deny all site plans submitted under this statute. Each site plan shall comply with the "Standards for Granting a Site Plan Approval" as described in Section VI and subsection A, of this statute. Each action taken with reference to site plan review shall be duly recorded in the official record of action by the Planning Department. The Zoning Administrator shall forward any site plan received to the Planning Department for review. Those site plans which require review will then be submitted to the Planning Department for action along with the recommendation as to conformity or nonconformity with statute requirements and what revisions or conditions, if any, would be necessary in order to be in conformance. Prior to any final decision, the Planning Department may seek the recommendations of the LTBB Natural Resources Department, Economic Development Department, Housing Department, and Environmental Department. The Planning Department may also seek consultation and recommendations from other governments, licensed architects and/or licensed engineers.

B. All site plans shall be acted upon within sixty (60) days of receipt by the Planning Department of a complete application and site plan meeting the requirements of subsection 2

above. Following approval of a site plan, the petitioner shall apply for the appropriate LTBB, County, State or Federal permits as may be required by said agencies and present appropriate plans and specifications as may be required by such agencies.

(Source: WOS 2005-05, May 1, 2005, Section III)

10.505 PROCEDURES FOR SUBMISSION AND REVIEW OF APPLICATIONS FOR MAJOR PROJECTS

A. Major projects. All developments greater than 2500 square feet of structure, or larger than five (5) acres in size, and all PUD's are major projects, which require preliminary site plan review by the Planning Department pursuant to the requirements below. All other projects are either minor projects (see Subsection 11) subject to review and approval by the Planning Department or amendments to existing site plans, which are processed pursuant to the requirements in Subsection 12 below.

B. Submission requirement. The applicant shall complete and submit the required number of copies of an application for Site Plan Approval, site plans, and other information where applicable. Compliance with the requirements of the Zoning Statute is mandatory. The procedure for processing major project site plans includes three phases: conceptual review via a re-application conference, preliminary site plan review and final site plan approval.

C. Pre-application conference. During this conceptual review phase, a generalized site plan is presented by a prospective applicant for consideration of the overall idea of the development. Basic questions of use, density, integration with existing development in the area and impacts on and the availability of public infrastructure are discussed. This conference is scheduled by a prospective applicant with the Planning Department and such other LTBB representatives as appropriate, including at least one member of the Planning Department. At this meeting the applicant or his/her representative is also presented with the applicable procedures required by the statute for approval of the proposed development and with any special problems or steps that might have to be followed, such as requests to the Zoning Board of Appeals for a variance. There is no charge or fee to the applicant for this meeting.

D. Preliminary Site Plan Review. The second phase is called Preliminary Site Plan Approval. At this step a preliminary site plan meeting the submission requirements of this statute (see Subsection 5) is reviewed by the Planning Department the changes necessary, if any, for final site plan approval are indicated in writing to the applicant.

E. Final Site Plan Review. The approving body or official shall indicate in writing that all requirements of the statute including those of other reviewing agencies have been met including any conditions that may be necessary. Where the applicant is dependent upon the grant of any variances by the Zoning Board of Appeals, said favorable action by the Zoning Board of Appeals is necessary before final site plan approval can be granted. An approved site plan shall include a note referencing the case number and date of all variances granted.

(Source: WOS 2005-05, May 1, 2005, Section IV)

10.506 DISTRIBUTION OF REQUIRED COPIES AND ACTION ALTERNATIVES

Where Site Plan Review is required by this statute, an applicant for Site Plan Approval shall complete and submit copies of an Application for Site Plan Approval, site plans, and other information where applicable.

A. The Application for Site Plan Approval must be obtained from the Planning Department. The applicant is asked to keep one copy for his/her records. The applicant shall return the original and two (2) copies of the application to the Planning Department at least thirty (30) days prior to the next preliminary site plan review or at least thirty (30) days prior to the next regularly scheduled meeting of the Planning Commission if such commission has been created and appointed.

B. Application fees as found in the LTBB Fee Resolution must be paid when the application is submitted and sufficient escrow accounts must be established to cover the projected review costs.

C. The Planning Department will consider all applications for site plan review submitted to it for approval, revision, or disapproval at a scheduled meeting:

- 1.** Upon determination of the Planning Department that a site plan is in compliance with the Zoning Statute and other plans or regulations, it shall be so indicated on the site plan.
- 2.** Upon determination of the Planning Department that a site plan is in compliance, except with minor revisions, said changes shall be so indicated. When these changes have been adequately provided, the petitioner shall resubmit the site plan to the Planning Department for Final Site Plan Approval.
- 3.** If extensive revisions to the site plan are necessary to meet the Zoning Statute, and other applicable plans and regulations, the site plan shall be disapproved, and the applicant requested to prepare an alternate site plan. In this case, "DISAPPROVAL" shall be written on the plan and reasons for disapproval indicated on the plan.

D. Any site plans reviewed and approved by the Planning Department pursuant to Subsection 11 and all final site plans shall have the same submission requirements and action alternatives as for preliminary site plans described in the above requirements with the following exceptions:

- 1.** Three (3) copies of the final site plan and related information shall be submitted.
- 2.** Three (3) copies will be distributed to other reviewing agencies as determined necessary by the Planning Department.
- 3.** Final action shall be taken within thirty (30) days.

E. When a site plan is reviewed and approved or disapproved by the Planning Department, and all steps completed, three (3) copies of the site plan will be marked by the Planning Department for the following distribution:

1. One (1) copy returned to the applicant signed by the Director of the Planning Department including any conditions of approval.
2. One (1) copy forwarded to the Building Department for filing.
3. One (1) copy forwarded to the Planning/Zoning Department for filing.

F. Upon Final Site Plan Approval by the Planning Department a building permit may be obtained subject to review and approval of the plans by a licensed architect or engineer.

G. Failure to initiate construction of an approved site plan within six (6) months of approval shall require the applicant to appear before the Tribal Council and demonstrate why the approval should not be revoked. After a hearing the Planning Department may revoke a previously approved site plan for property on which no physical development activity has occurred upon making written findings that one or more of the following circumstances exist:

1. An error in the original approval is discovered either because of inaccurate information supplied by the applicant or administrative error by a staff member or other agency;
2. Zoning regulations applicable to the project have been changed and the previously approved site plan does not comply with them;
3. A change in LTBB law affecting the previous approval has occurred;
4. Pollution, impairment or destruction of the environment or to another legally protected public interest would occur if the project were to be constructed as previously approved.

H. Thirty (30) days prior to expiration of an approved site plan pursuant to Subsection h. above, an applicant may make application for a six (6) month extension of the site plan at no fee. The applicant shall explain in writing why the development has not proceeded, what the current time frame is and why an extension should be granted.

I. Revocation of an approved site plan shall be communicated in writing by certified mail to the property owner. The Building Inspector shall also be notified to withhold any building permit until a new site plan is approved.

J. Any subsequent re-submission shall be processed as a new request with new fees, except for minor amendments pursuant to Subsection 12 below.

(Source: WOS 2005-05, May 1, 2005, Section V)

10.507 STANDARDS FOR GRANTING SITE PLAN APPROVAL

A. Each site plan shall conform to all applicable provisions of this Zoning Statute and the standards listed below:

- 1.** All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this statute.
- 2.** The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications, which result in maximum harmony with adjacent areas.
- 3.** Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring properties.
- 4.** The site plan shall provide reasonable visual and sound privacy for all dwelling units located therein. Fences, walks, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.
- 5.** All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides.
- 6.** Every structure or dwelling unit shall have access to a public street, walkway or other area dedicated to common use.
- 7.** There shall be provided a pedestrian circulation system, which is insulated as completely as reasonably possible from the vehicular circulation system.
- 8.** All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a vertical screen consisting of appropriate materials no less than six (6) feet in height.
- 9.** Exterior lighting shall be arranged that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets.
- 10.** The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the

traffic volume they will carry and shall have a dedicated right-of way equal to that specified in the Comprehensive Plan.

11. All streets shall be developed in accordance with the Subdivision Control Statute and/or applicable County Road Commission, Bureau of Indian Affairs, or LTBB specifications.

12. Site plans shall conform to all applicable requirements of state and federal statutes and approval may be conditioned on the applicant receiving necessary state and federal permits before final site plan approval or an occupancy permit is granted.

(Source: WOS 2005-05, May 1, 2005, Section VI)

10.508 CONDITIONAL APPROVALS

A. The Planning Department may condition approval of a site plan on conformance with the standards of another local, county or state agency, such as but not limited to a Water and Sewer Department, County Drain Commission, County Road Commission, State Highway Commission or Natural Resources Department. They may do so when such conditions:

- 1.** Would insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity,
- 2.** Would protect the natural environment and conserve natural resources and energy,
- 3.** Would insure compatibility with adjacent uses of land, and
- 4.** Would promote the use of land in a socially and economically desirable manner.

(Source: WOS 2005-05, May 1, 2005, Section VII)

10.509 CONFORMITY TO APPROVED SITE PLAN REQUIRED

Following Final Approval of a site plan by the Planning Department, the applicant shall construct the site plan improvements in complete conformity with the approved plan. Failure to do so is a violation of this statute and subject to sanctions of as set out else where in this statute or a separate statute if enacted.

(Source: WOS 2005-05, May 1, 2005, Section VIII)

10.510 PERFORMANCE GUARANTEE REQUIRED

In the interest of insuring compliance with the Zoning Statute provisions, protecting the natural resources and the health, safety and welfare of the citizens of the Tribe and future users

or in habitants of an area for which a site plan for a proposed use has been submitted. The Tribal Council may require the applicant to deposit a performance guarantee as set forth herein. The purpose of the performance guarantee is to insure completion of improvements connected with the proposed use as required by this statute, including but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips.

- A.** Performance guarantee as used herein shall mean a cash deposit, certified check, irrevocable bank letter of credit or corporate surety bond in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the Planning Department.
- B.** Where the Tribal Council requires a performance guarantee, said performance guarantee shall be deposited with the Chief Financial Officer prior to the issuance of a building permit by the Building Inspector for the development and use of the land. Upon the deposit of the performance guarantee the LTBB shall deposit the performance guarantee, if in the form of a cash deposit or certified check in an interest-bearing account to the applicant.
- C.** An approved site plan shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building permit.
- D.** In the event the performance guarantee deposited is a cash deposit or certified check, the LTBB shall rebate to the applicant fifty (50) percent of the deposited funds when sixty (60) percent of the required improvements are completed as confirmed by the Zoning Administrator, and the remaining fifty (50) percent of the deposited funds when one hundred (100) percent of the required improvements are completed as confirmed by the Zoning Administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements the performance guarantee herein required may be applied by said applicant to assure compliance with the Zoning Statute standards and the specifications of the approved site plan.
- E.** Upon the satisfactory completion of the improvement for which the performance guarantee was required, as determined by the Zoning Administrator, the Chief Financial Officer shall return to the applicant the performance guarantee deposited and any interest earned thereon.
- F.** In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the LTBB, the LTBB shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements. If the performance guarantee is not sufficient to allow the LTBB to complete the improvements for which it was posted, the applicant shall be required to pay the LTBB the amounts by which the costs of completing the improvements exceeds the amount of the performance guarantee deposited. Should the LTBB use the performance guarantee or a portion thereof, to complete the required improvements, any amounts remaining after said completion shall be applied first to the LTBB administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If

the applicant has been required to post a performance guarantee or bond with another governmental agency other than the LTBB to insure completion of an improvement associated with the proposed use prior to the LTBB conditional approval, the applicant shall not be required to deposit with the LTBB performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the LTBB and prior to the issuance of a building permit, the applicant shall enter an agreement incorporating the provisions hereof with the LTBB regarding the performance guarantee.

(Source: WOS 2005-05, May 1, 2005, Section IX)

10.511 PLANNING DEPARTMENT REPORT ON EVERY SITE PLAN

The Planning Department shall prepare a report of each and every site plan submitted in accordance with this section, containing a synopsis of the relevant facts contained in and related to this site plan, together with the Planning Department's proposed determination.

(Source: WOS 2005-05, May 1, 2005, Section X)

10.512 PLANNING DEPARTMENT APPROVAL

A. The Planning Department shall review and approve the following site plans without their submission to the Tribal Council except that where the applicant so requests, the Tribal Council so requests, or the Planning Department so requests then the site plan shall be reviewed by the Tribal Council before final action by the Planning Department:

- 1.** Accessory uses incidental to a conforming existing use where said use does not require any variance and where said site plan conforms with all the requirements of this Statute.
- 2.** Expansion and/or addition to an existing conforming use where said site plan conforms with all the requirements of this statute and does not increase the size of the existing use or structure more than 25% of the present size.
- 3.** Accessory storage buildings in all Zoning Districts.
- 4.** Increases in off-street parking areas, parking buildings and/or structures, increases in loading/unloading spaces in commercial and industrial Zoning Districts, and landscape improvements as required by this statute.
- 5.** For those Special Land Uses so specifically identified in this statute.
- 6.** Amendments to approved site plans.
- 7.** Final site plans.
- 8.** Any other site plan review not delegated for review by the Tribal Council.

B. The Planning Department shall apply all applicable standards and procedures of this statute in approving; conditionally approving or denying site plans.

C. Data submission requirements shall be as specified in Section - Subsection above.

(Source: WOS 2005-05, May 1, 2005, Section XI)

10.513 AMENDMENTS TO APPROVED SITE PLANS

A. Amendments to an approved site plan may be made by the Planning Department provided that such changes conform to the Zoning Statute and the land owner agrees. Minor changes to an approved site plan may be approved by the Planning Department after construction has begun provided no such change results in any of the following:

1. A significant change in the use or character of the development.
2. An increase in overall coverage of structures.
3. A significant increase in the intensity of use.
4. A reduction in required open space.
5. A reduction in required off-street parking and loading.
6. A reduction in required pavement widths or utility pipe sizes.
7. A significant increase in traffic on public streets or an increase in the burden on public utilities or services.

B. No fees shall be required for the following minor amendments:

1. Moving building walls within the confines of the smallest rectangle that would have enclosed each original approved building(s), relocation of building entrances or exits or shortening of building canopies.
2. Changing to a more restricted use provided there is no reduction in the amount of off-street parking as originally provided.
3. Changing the angle of parking or aisle width provided there is no reduction in the amount of required off-street parking or in reduction of aisle width below statute requirements.
4. Moving of ingress and egress drives a distance of not more than 100 feet if required by the appropriate state, county or other local road authority with jurisdiction.

5. Substituting landscape plan species provided a nurseryman; landscape architect, engineer or architect certifies the substituted species is similar in nature and screening effects.
6. Change type and design of lighting fixtures provided an engineer or architect certifies there will be no change in the intensity of light at the property boundary.
7. Increase peripheral yards.
8. Changing the location of an exterior building wall or location not more than ten (10) feet because of a natural impediment or hazard such as bedrock or muck soils provided that in so doing no setback requirement of the statute is violated and no significant reduction in safety or in the amount of open space is thereby affected.

C. If the Zoning Administrator finds that a proposed amendment to an approved site plan does not qualify as a minor change, he or she shall immediately notify the permit holder, the Building Inspector, the Planning Department in writing that site plan approval has been suspended pending approval by the Planning Department or Tribal Council, as applicable, of the proposed amendment. The permit holder's notice shall be delivered by certified mail. If construction has begun, a stop work order shall be issued by the Building Inspector for that portion of the project, which is not in compliance with the statute. Once site plan approval for a project has been suspended, the permit holder has the option of changing the project plans to conform with the statute requirements, or of restarting the Site Plan Review process. When the issue has been resolved, the Zoning Administrator shall send a written notice to the permit holder, the Building Inspector, the Planning Department that the project's site plan has again been approved. This provision is not to be construed to prohibit phased development of a project, provided that each phase is developed in accordance with an approved site plan.

(Source: WOS 2005-05, May 1, 2005, Section XII)

10.514 APPEALS OF FINAL SITE PLANS

- A. Any person aggrieved by a decision of the Planning Department in granting or denying approval of a final site plan may appeal the decision to the Zoning Board of Appeals. The appeal must be filed within seven (7) days of the decision and shall state the factual basis for the appeal. An appeal shall stay action on the issuance of any permit pursuant to an approved site plan.
- B. The Zoning Board of Appeals shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken. No new evidence shall be presented. The Zoning Board of Appeals shall approve the final site plan if the requirements of this Section and other applicable statute requirements are met. The Zoning Board of Appeals shall make written findings in support of its opinion on the appeal.

(Source: WOS 2005-05, May 1, 2005, Section XIII)

10.515 AS-BUILT SITE PLAN

Upon completion of the installation of required improvements as shown on the approved site plan, the property owner shall submit to the Zoning Administrator two (2) copies of an "as built" site plan, certified by the engineer or surveyor, at least one week prior to the anticipated occupancy of any building. The Zoning Administrator may circulate the as built plans among the appropriate departments for review to insure conformity with the approved site plan and other requirements. Once each department has approved the as built plans the Zoning Administrator may make the final inspection and issue the Occupancy Permit.

(Source: WOS 2005-05, May 1, 2005, Section XIV)

10.516 LAND CLEARING

No person shall undertake or carry out any such activity or use, including any grading, clearing, cutting and filling, excavating, or tree removal associated therewith for which site plan approval is first required by this statute. Nor shall such activity proceed prior to obtaining necessary soil erosion and sedimentation control permits, wetlands permits, or floodplains permits. Any violation of this provision is subject to the fines and penalties prescribed in Section of this statute for each day of the violation from the day of discovery of the incident until an approved restoration plan, or an approved site plan is granted.

(Source: WOS 2005-05, May 1, 2005, Section XV)