

SKOKOMISH ENVIRONMENTAL PROTECTION ACT

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General Provisions

6.03.112 Title

This Ordinance shall be known as the Skokomish Environmental Protection Act.

6.03.113 Purpose and Scope

- (a) The purpose of this Act is to fulfill the Skokomish Indian Tribe’s sovereign duty to protect the quality of environment within the boundaries of the Skokomish Indian Reservation and all lands owned by the Tribe. The beneficial stewardship of the land, air, and waters of the Skokomish Indian Reservation is a solemn obligation of the present generation for the benefit of future generations, as the traditions and customs of the Tribe reflect the belief that every person has a fundamental and inalienable right to a healthful environment. In promulgating this Act, the Skokomish Tribal Council intends to further the following goals of the Tribe:
 - (1) To protect the natural resources of the Tribe and other lands owned and managed by the Tribe from contamination, pollution, and other degradation.
 - (2) To protect and enhance the habitat of all types of fish, shellfish, and wildlife resources, particularly the Skokomish River estuary and associated wetlands that are critically important components of the ecosystem and its support of fish and shellfish resources.

- (3) To minimize the adverse impacts that would result from locating developments in environmentally sensitive areas.
 - (4) To preserve the traditional open, rural, natural environment that has been integral to the current and historical lifeways of the Twana and Skokomish peoples.
- (b) The provisions of this Act shall apply to the fullest extent of the sovereign jurisdiction of the Skokomish Indian Tribe authorized by the Constitution of the Skokomish Indian Tribe, the Treaty of Point No Point, and applicable federal law. The provisions of this Act shall apply to and be in conformity with all agreements and other cooperative arrangements entered into by the Skokomish Indian Tribe designed to ensure economic self-sufficiency for the Tribe and its people. The provisions of this Act shall apply to all persons who are employed by the Skokomish Indian Tribe and appointed by the Skokomish Tribal Council to serve on advisory committees, task forces, or Tribal enterprises.
 - (c) The Skokomish Tribal Council concurs with federal and state legislation and policies that emphasize environmental protection, including but not limited to the National Environmental Policy Act, the Coastal Zone Management Act, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Washington State Environmental Policy Act, and the Washington Shoreline Management Act. The Tribal Council recognizes that ecosystems operate without jurisdictional boundaries, and this Act is intended to be implemented with the spirit of cooperation with other governments and their agencies.
 - (d) These provisions are not to be deemed substitutes for zoning, land use, development or other building ordinances. Regulation and permitting process for these areas are provided for in other parts of the Skokomish Tribal Code.

6.03.114 Authority

This Act is enacted pursuant to Art. V, Sec. 1(e), (h), and (j) of the Constitution of the Skokomish Indian Tribe.

6.03.115 Jurisdiction

- (a) The provisions of this Act shall apply to all persons, property, and lands subject to the governing authority of the Skokomish Indian Tribe as established by the Tribal Constitution and by the laws of the United States.
- (b) Any person who resides within the territorial jurisdiction of the Skokomish Indian Tribe, or conducts business or engages in a business transaction within the territorial jurisdiction of the Skokomish Indian Tribe, shall be deemed to have consented to the civil jurisdiction of the Skokomish Indian Tribe for purposes of legal actions under this Act, including detainment, service of process and summons, and search and seizure.

6.03.116 Definitions

For purposes of this Act, unless otherwise expressly provided, the following definitions shall

apply:

- (a) “Buffer” means a quantifiable area of land adjacent to a critical area (streams, wetlands, marine shorelines, erosion hazard areas) that protects the functions and values of a critical area.
- (b) “Construction” means any onsite activity that is directly related to building or modifying a structure. It does not include minor repairs to or painting of existing structures.
- (c) “Department” means the Skokomish Department of Natural Resources.
- (d) “Director” means the Director of the Skokomish Department of Natural Resources or his/her delegate.
- (e) “EIS” means environmental impact statement.
- (f) “Floodplain” means lowlands adjoining the channel of a river, stream, or other body of water that may have been or may become inundated by floodwater, and those areas subject to flooding. With regard to this Act, the term refers to the area inundated by the 100-year flood event. These areas are identified as “flood hazard areas” by the Federal Emergency Management Agency (FEMA) under the auspices of the National Flood Insurance Program (NFIP).
- (g) “Land disturbing activity” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity.
- (h) “Normal public use” means fishing, shellfishing, boating, swimming, and general recreation by persons with a legal right to engage in those activities.
- (i) “Planning Board” means the board of employees of the Skokomish Indian Tribe who review SKEPA applications and determine what kind, if any, permit will be granted. The Planning Board consists of the Director, the Environmental Planner, the Community Planning Department Director or his/her delegate, the Tribe’s Historic Preservation Officer (THPO), the Lands Coordinator, and others as deemed necessary by the Planning Board.
- (j) “Proposed activity” and “activity” mean a development, project, construction, or other proposed action.

- (k) “Reservation” means all lands and waters within the exterior boundaries of the Skokomish Indian Reservation, as now or later proclaimed.
- (l) “Skokomish community” means any person or entity residing or operating within the boundaries of the Skokomish Indian Reservation, and also includes all enrolled members of the Skokomish Indian Tribe regardless of whether they reside within or outside the boundaries of the Skokomish Indian Reservation.
- (m) “Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, and includes roads, streets, sidewalks, and other causeways.
- (n) “Tribal Council” refers to the governing body of the Skokomish Indian Tribe as defined in the Skokomish Tribal Constitution.
- (o) “Tribal Court” means the Skokomish Tribal Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of this Tribe to exercise the powers and functions of a court of law.
- (p) “Tribal law enforcement” or “Tribal police” means the Skokomish Department of Public Safety and includes fisheries enforcement officers.
- (q) “Tribal law enforcement officer” means a sworn officer acting under the authority of the Skokomish Indian Tribe through the Skokomish Department of Public Safety.
- (r) “Tribe” refers to the Skokomish Indian Tribe as defined in the Skokomish Tribal Constitution.
- (s) “Water-dependent use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.
- (t) “Wetlands” and “wetland areas” mean lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water. Wetlands have one or more of the following attributes:
 - (1) At least periodically, the land predominantly supports hydrophytes.
 - (2) The substrate is predominantly undrained hydric soil.
 - (3) The substrate is non-soils and is saturated with water or covered by shallow water at some time during the growing season of each year.

6.03.117 Construction

This Act shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

6.03.118 Severability

If any provision of this Act, or its application to any person, legal entity, or circumstance, is held invalid, the remainder of the Act, or the application of the provision to other persons, legal entities, or circumstances, shall not be affected.

6.03.119 No Waiver of Sovereign Immunity

Nothing in this Act shall be deemed to have waived or to permit the corporation to waive the Tribe's sovereign immunity from suit. The Skokomish Indian Tribe expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal, or tribal court without the Tribe's express consent.

Special Provisions

6.03.120 Time Limits

Time limits imposed on the Tribal Council in this Act are guidelines. Postponements for lack of a quorum shall have no consequence except a delay in the process. Time limits for the EIS shall be made by agreement of the applicant and the Director. Time limits throughout the Act shall be construed in a manner that accomplishes the goals of this Act.

6.03.121 Preservation of Natural Character

All developments shall be consistent with the natural characteristics and ecological systems of the Reservation. Developments in sensitive areas, such as steeply sloped land, flood plains, and wetlands, if allowed, shall have only a minimum level of impact upon the natural systems.

6.03.122 Natural Buffers

All activities must leave undisturbed, natural, vegetated buffers adjacent to rivers, streams, and wetlands. Construction, accessory uses, septic tanks, and agriculture are prohibited within the buffer. Timber harvesting is prohibited within the buffer, except those trees that have naturally fallen across a waterway or are deemed a danger, which may be removed upon prior authorization from the Director. A buffer of 150 feet shall remain adjacent to all fish-bearing streams, including the Skokomish River and Skabob Creek. A buffer of 100 feet shall remain adjacent to all non-fish-bearing streams. The Tribal Council may increase or decrease the size of a buffer for a particular activity in order to meet other goals, purposes, and standards of this Act or other applicable law. Buffers shall be measured landward from the channel migration zone or the ordinary high water mark, whichever is greater. Buffers adjacent to a stream or river shall be left on both sides of the waterway.

6.03.123 No Interference with Fishing Rights

No activity shall occur in a manner that causes interference with the exercise of Skokomish Treaty fishing rights. No activity shall block or impede the free movement of fish.

6.03.124 Quality of Water, Fish, and Wildlife

Activities shall be located, designed, constructed, and operated in a manner that minimizes adverse impacts on fish, shellfish, wildlife, water quality, and existing geohydraulic shore and stream processes.

6.03.125 Estuarine and/or Near Shore Marine Shoreline Setback

Structures or activities that are not water-dependent uses shall be located inland, at least 250 feet from the mean high water level, when practicable.

6.03.126 Fish Wastes

Discharge of wastes from fish and shellfish processing into water bodies shall, at a minimum, meet the federal standards for those activities. Alternative uses for fish and seafood wastes, such as fertilizer, are encouraged.

6.03.127 Recycling

Wastes or refuse from any activity shall be recycled when practicable.

6.03.128 Flood Proofing

No activity shall be located in areas subject to flooding or tidal inundation unless complete flood-proofing measures have been implemented, and then only when the location of the structure will not aggravate flooding potentials of the nearby properties. Structures within the 100-year flood plain must comply with federal flood-proof standards necessary to obtain federal flood insurance, whether flood insurance is obtained or not.

6.03.129 Erosion Control, Clearing and Grading

An erosion control plan must be approved prior to issuance of a permit under this Act for any activity that poses a risk of erosion during or after construction. No earth or debris resulting from the activity shall be allowed to enter streams, lakes, or marine waters. No activity shall contribute to foundation instability or mass soil movement. All clearing, grading and land disturbing activities must be designed to minimize impact to the environment.

6.03.130 Use of Fill

Use of fill material is permitted only upon prior approval by the Director. If an activity uses fill material to accommodate the activity, the Director may require a professionally licensed engineer to certify that the fill will not alter or impede the natural flow of surface water or groundwater, or present a geologic hazard. There shall be no excavation or filling of stream channels or lakes, or alteration of stream courses unless required for a project that would enhance the biological

productivity of the aquatic environment, in which case it will be a conditional use.

6.03.131 Sewage Disposal and Drinking Water

Any activity that requires sewage disposal or extraction of drinking water shall not result in erosion, mass movement of soil, contamination of groundwater, saltwater intrusion, or any other adverse impacts to the environment. The Tribe may require the applicant or permit holder to submit a report completed by a professionally licensed engineer to prove the absence of all adverse impacts to the environment.

6.03.132 Herbicides and Pesticides

Application of herbicides and pesticides is prohibited except for:

- (a) Conditional permits that may be issued for agricultural (including tree farming) and residential applications, but only when no reasonable alternative is available to control pests or invasive plant growth; and
- (b) Single family residences using non-commercial grade products.

Skokomish Department of Natural Resources

6.03.140 Authority and Duty of the Skokomish Department of Natural Resources

The Department, in addition to other duties, acts in a regulatory and advisory capacity to the Tribal Council in order to manage SKEPA-related activities under this Act. The Department may prepare and recommend for promulgation by the Tribal Council regulations for all aspects of SKEPA-related activities and permits. The Department may also monitor and inspect, in conjunction with Tribal law enforcement, all SKEPA-related activities and permits within the Reservation and within all Tribal Trust lands off the Reservation for compliance with this Act and all regulations adopted under it.

SKEPA Permits

6.03.145 When Required

Any person conducting an activity within the boundaries of the Reservation or with the boundaries of Tribal Trust land outside of the Reservation shall be required to obtain a Skokomish Environmental Protection Act (SKEPA) Permit from the Skokomish Department of Natural Resources. Activities requiring a permit include, but are not limited to, the following:

- (a) Preparation of a site for the construction of a building or area for purpose of human habitation, business use, or public use;
- (b) Construction of any structure and construction that expands the square footage of the exterior of an existing structure by more than 100 square feet or has clearing, grading, and/or land disturbing components;

- (c) Conduct of a business operation;
- (d) Road construction or repair, and right-of-way maintenance;
- (e) Construction or repair of culverts and drainage ditches;
- (f) Construction of any water or flood-related project, regardless of the nature or extent of the construction activity;
- (g) Any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands within the Reservation at any state of water level;
- (h) Dredging, drilling, dumping, removal of sand, gravel, or minerals, bulkheading, diking, riprapping, or driving of piling;
- (i) Timber harvesting on lands not designated as forest lands;
- (j) Spraying or other application of pesticides and herbicides, except for use by single family residences using non-commercial grade products;
- (k) Clearing, grading, or other land disturbing activity;
- (l) Storage, application, disposal, or incineration of solid waste and/or hazardous materials as defined within the Resource Conservation Recovery Act, 42 U.S.C. § 6992 *et seq.*
- (m) Other activities prohibited or restricted pursuant to regulations promulgated by the Department under this Act.

6.03.146 Exceptions

Except where otherwise prohibited by law, the following activities do not require a SKEPA Permit:

- (a) Residential home improvements, except for clearing, grading or other land disturbing activity;
- (b) Personal use of non-timber forest resources for subsistence or traditional cultural purposes by Skokomish Tribal members, such as brush picking, berry gathering, or mushroom foraging;
- (c) Business conducted in the home, except where construction is required; and
- (d) Fireworks stands licensed by the Tribe, as long as there is no land disturbing activity needed for installation.

6.03.147 “Grandfathered” Activities

Structures in existence prior to the adoption of this Act are exempt from SKEPA Permit requirements under this Act. Modifications to such structures made after the adoption of this Act may independently require a SKEPA Permit in accordance with this Act.

SKEPA Permit Application

6.03.150 Environmental Checklist

Any person intending to engage in activities requiring a SKEPA Permit under this Act shall obtain a permit application and environmental checklist from the Director.

6.03.151 Filing

Any person intending to engage in activities requiring a SKEPA Permit under this Act shall submit a completed permit application and environmental checklist to the Director with a \$25.00 filing fee, except where the Director waives the fee due to the applicant’s financial hardship. The filing fee shall not be assessed to Tribal members.

6.03.152 Review Process

The permit application and environmental checklist shall be initially reviewed by the Director, who will render a decision to approve, deny, or condition the permit. The Director may request assistance from appropriate technical personnel in conducting the review. The Director’s written decision shall include the following determinations:

- (a) *Is there sufficient information in the application?* Does the permit application and environmental checklist contain adequate information on which to base a decision to either approve or deny the permit, or to allow a conditional use? If there is not enough information, the Director may require a personal conference with the applicant.
- (b) *Are the goals and purposes of the Act met?* Does the proposed activity conform to the goals and purpose of this Act, as set forth in S.T.C. 6.03.113?
- (c) *Have the environmental review criteria been met?* Does the proposed activity meet the environmental review criteria under S.T.C. 6.03.160 through S.T.C. 6.03.173?
- (d) *Are there archaeological issues to be addressed?* Does the proposed activity adequately address archaeological and historical site concerns, and is the proposed activity compatible with the policies for such sites under S.T.C. 6.03.195 through S.T.C. 6.03.197?
- (e) *Are the standards of the Act met?* Does the proposed activity conform to standards set forth for that type of activity under S.T.C. 6.03.120 through S.T.C. 6.03.132?

6.03.153 Initial Notice to Applicant

Within 30 days from the date the Department receives a completed application and environmental checklist, the Director shall notify the applicant of one or more of the following:

- (a) The applicant must attend a personal conference with the Director to clarify or complete information required by the permit application or environmental checklist.
- (b) The Director requires additional time to make a determination regarding the SKEPA Permit application.
- (c) The Director has determined there may be a significant impact to the environment, and an environmental impact statement will be required under S.T.C. 6.03.165.
- (d) The Director has determined that the archaeological and historical preservation requirements of S.T.C. 6.03.195 through S.T.C. 6.03.197 necessitate further action by the applicant.
- (e) The Director has made a finding of no significant impact (FONSI) and has approved the SKEPA Permit application.
- (f) The Director has made a FONSI pursuant to S.T.C. 6.03.161, and has approved the SKEPA Permit application subject to conditions set by the Director.
- (g) The Director has determined that the permit must be denied. The initial notice to the applicant must describe the reasons for the denial.

Environmental Review

6.03.160 Generally

- (a) The Planning Board shall review each permit application and environmental checklist for the purpose of determining whether a proposed activity will significantly impact the environment. If so, the applicant will be required to prepare an environmental impact statement conforming to the requirements of S.T.C. 6.03.166 through S.T.C. 6.03.168. If there any potential archaeological and historical site concerns, then the applicant may be required to follow the procedures under S.T.C. 6.03.195 through S.T.C. 6.03.197.
- (b) The Director may use any technical assistance he/she may require in making a review. The Director may present a permit application and environmental checklist to the Tribal Council for additional input.
- (c) The determination of whether a proposed activity will significantly impact the environment shall be made in the context of Skokomish Tribal culture and values. Factors to be considered in evaluating a permit application and environmental checklist include:

- (1) The degree to which the proposed activity will adversely affect the quantity and quality of the fish and shellfish resources of the Tribe;
- (2) Unique or sensitive characteristics of the geographic or hydrologic area in which the proposed activity will take place;
- (3) The degree to which the action may adversely affect an endangered or threatened species or its habitat;
- (4) Whether the proposed activity may cause loss or destruction of cultural, historical, or scientific resources;
- (5) The degree to which the proposed activity affects health and safety of the Skokomish community;
- (6) The degree to which the effects of the proposed activity are uncertain or involve unique or unknown risks;
- (7) The degree to which the proposed activity may establish a precedent for future actions with significant effects;
- (8) The level of Skokomish community support or opposition;
- (9) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. If it is reasonable to anticipate a cumulatively significant impact on the environment, the activity is significant;
- (10) Whether the action threatens a violation of federal, state, or local law or requirement, or inter-local cooperation agreement to which the Tribe is a party;
- (11) Whether the action would violate the Constitution of the Skokomish Indian Tribe or any other law or policy of the Tribe.

6.03.161 Finding of No Significant Impact to the Environment

If the Director determines that the proposed project will not have a significant impact to the environment, based on a review of the environmental checklist, the applicant conference, if any, and the recommendations of any technical persons consulted, he/she shall prepare a finding of no significant impact (FONSI).

6.03.162 Cultural Values and Community Aesthetics

If the Director issues a FONSI, but also finds that a proposed activity may adversely impact Tribal cultural values or community aesthetics, he/she may post a notice requesting public comment at the Skokomish Fisheries Building, Twin Totems store, and the Skokomish Tribal Center. Any interested person or entity may submit written comments to the Director within 15 calendar days of the date the notice is posted.

6.03.163 Tribal Council Review – Initial Permit Application

If the Director chooses to seek input from the Tribal Council on an initial permit application, then the Director shall forward all materials relevant to the application to the Tribal Council for review at the next regularly scheduled meeting. The Tribal Council may make a recommendation to the Director. The Director's findings and decision shall state whether the Tribal Council reviewed the application materials, when the review was completed, and what, if any, recommendations were made by the Tribal Council.

6.03.164 Conditional Permits

The Director may issue a SKEPA Permit with conditions when a proposed activity substantially, but not entirely, meets the requirements set forth in S.T.C. 6.03.152 and the activity could be conducted in harmony with the Tribe's purposes under this Act if certain acts or omissions are performed by the applicant. A SKEPA Permit is issued subject to those conditions and is revocable if those conditions are not met by the applicant. The Director may grant a conditional SKEPA Permit in his/her discretion after a finding of no significant impact pursuant to S.T.C. 6.03.161, or after the environmental impact statement process, as provided in S.T.C. 6.03.166 through S.T.C. 6.03.168.

6.03.165 Environmental Impact Statement – When Required

If the Director determines that the proposed activity will significantly impact or is likely to significantly impact the environment, the applicant shall be required to prepare an environmental impact statement (EIS).

6.03.166 Environmental Impact Statement – Format

The EIS shall be written in plain language so that it is easily understood. Supplemental materials that are of a technical nature may be included for review by the Tribe's technical staff and advisors. The applicant shall provide the Tribe with an original and 10 copies of the EIS. The EIS shall substantially follow the format set forth below:

- (a) *Cover Sheet.* A one-page cover sheet that gives the title of the proposed activity or project, the name, address, and telephone number of the preparer(s), identified as such. The same information for the applicant. A one-paragraph abstract of the proposed activity.
- (b) *Summary.* A summary, not to exceed 15 pages, adequately and accurately summarizing the major conclusions, areas of controversy, and issues to be resolved, including alternatives.
- (c) *Purpose and Need Statement.* A statement briefly specifying the underlying need for the proposed activity.
- (d) *The Proposed Activity and Alternatives.* This section is the heart of the EIS. It shall present the environmental impacts of the proposed activity and the alternatives in comparative form to make a clear basis for choice among options. It shall rigorously explore and objectively evaluate all reasonable alternatives, including the alternative

of no action. It shall also include appropriate mitigation measures not already included in the proposed activity or alternatives.

- (e) *Affected Environment.* The EIS shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration.
- (f) *Environmental Consequences.* This section shall include the actual and potential environmental impacts of the proposed activity, including alternatives to the proposed activity, and shall include the following items:
 - (1) Any adverse environmental effects that cannot be avoided should the proposal be implemented;
 - (2) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity;
 - (3) Any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented;
 - (4) Any direct or indirect effects and their significance;
 - (5) Any possible conflicts between federal, state, regional, local and inter-local plans, policies, and controls for the area concerned;
 - (6) Any energy requirements and conservation potential;
 - (7) Any specific impacts on the Skokomish Tribal fisheries, including habitat;
 - (8) Any specific impacts on the Skokomish Tribe's natural resources, including habitat;
 - (9) Any natural or depletable resource requirements, along with conservation potential and mitigation measures for the proposed activity and alternatives;
 - (10) Any impacts on the quality of Skokomish community life and compatibility with cultural values;
 - (11) Any means to mitigate adverse environmental impacts not already covered.
- (g) *List of Preparers.* The EIS shall list the names and qualifications (expertise, experience, professional disciplines) of the persons who were primarily responsible for preparing the EIS. Persons responsible for a particular section or analysis shall be identified.
- (h) *Appendix.* Materials prepared in connection with the EIS that substantiate any analyses or are otherwise relevant to the decision to be made may be placed in an appendix.

6.03.167 Environmental Impact Statement – Cost

The cost of preparing and copying the EIS shall be borne by the applicant.

6.03.168 Environmental Impact Statement – Sufficiency

- (a) The Director shall have the authority to determine whether an EIS is sufficient in scope, detail, and overall quality. The Director may require supplemental or revised materials to be presented if necessary to aid in making decisions based on the EIS.
- (b) If a proposed activity will be subject to environmental assessment or preparation of an EIS by another governmental authority, the Director may work with the applicant to coordinate the sharing of information and possible incorporation by reference of materials prepared by or for the other agency. The applicant is responsible for providing the Director with copies of all materials incorporated by reference.

6.03.169 Recommendation of Director

The Director shall prepare a written recommendation to the Tribal Council advising whether the proposed activity can be conducted without significant adverse impact to the environment. If the proposed activity can be conducted without significant adverse impact to the environment only if certain mitigating factors are present, the Director may recommend that a conditional permit be considered. A copy of the Director's recommendation shall be provided to the applicant at or prior to the public hearing.

6.03.170 Public Hearing – When Required

- (a) If a proposed activity requires an environmental impact statement, a public hearing shall be scheduled by the Director to take place within 30 days of receipt of the EIS from the applicant.
- (b) The Tribal Council shall preside over the hearing. The applicant shall be given an opportunity to give a presentation about the proposed activity, not to exceed one (1) hour. The Director shall present his/her recommendation. Additional public hearings before or after that hearing may be scheduled if the Director or the Tribal Council deems it to be in the best interest of the Skokomish community.

6.03.171 Public Hearing – Notice

Notice of public hearings under this Act shall be given to the applicant, the Tribal Council, and the Skokomish community. The notice shall state the time and place of the hearing and state the subject matter. The notice shall either be published in the Skokomish newsletter at least five (5) days before the hearing or shall be posted in at least two (2) prominent locations on the Reservation. The notice shall be mailed or served on the applicant at least 10 days before the hearing. The Director shall verify that the notices have been made as required.

6.03.172 Tribal Council Decision – Following Public Hearing

Following the public hearing(s), the Tribal Council shall decide whether to grant or deny the issuance of the SKEPA Permit, or to issue a conditional SKEPA Permit. The Tribal Council shall give notice of its decision to the applicant within 30 days of the final public hearing, at which time the Tribal Council shall also publish and post a notice to the Skokomish community of its decision. The notice shall be posted at the Skokomish Fisheries Building, Twin Totems store, and the Skokomish Tribal Center for a period of 15 days. The notice shall include the date of posting.

6.03.173 Basis for Decision to Approve, Deny, or Condition Permit

The decision to grant a permit, whether made by the Director or the Tribal Council, shall be based on whether the proposed activity would be conducted in a way that would affirmatively satisfy each of the factors in S.T.C. 6.03.152 being answered affirmatively. Conditional permits shall be granted in the discretion of the Director or Tribal Council as set forth in S.T.C. 6.03.164.

Appeal, Reconsideration, and Rehearing

6.03.180 Request for Rehearing

An applicant may request reconsideration by the Tribal Council of the decision to deny a permit. The Tribal Council may also grant review of an appeal from a decision regarding a conditional permit, in its discretion. Any member of the Skokomish Tribal community may appeal a decision to grant a permit, including a conditional permit, in the same manner as set forth above.

6.03.181 Notice of Appeal; Request for Reconsideration – Timing

Any notice of appeal or request for reconsideration under this Section must be filed no later than 15 calendar days from the date the permit was approved or denied. The appeal or request for reconsideration shall be made in writing and shall be served by certified mail, return receipt requested, on the Secretary of the Skokomish Tribal Council and on the Director.

6.03.182 Notice of Appeal; Request for Reconsideration – Content

The appeal or request for a rehearing shall contain a brief description of the proposed project, who made the decision appealed from and on what date, the specific reasons for the appeal or request for rehearing, and the outcome for which the person is asking. The notice shall list the names and addresses of any person who may be called as witnesses in the hearing. The person shall include a telephone number and address where he or she can be reached for notices.

6.03.183 Stay Pending Appeal or Reconsideration

No activity may proceed until all reviews under this Section, including judicial review, are concluded.

6.03.184 Scheduling of Hearing – Notice

The Tribal Council shall schedule a hearing no fewer than seven (7) and no more than 45

calendar days from the date it receives the notice of appeal or request for rehearing, unless the person requesting the hearing and the Council agree otherwise. The Council shall cause a notice of hearing to be mailed or delivered to the person and shall post a notice to the Skokomish Tribal community in the places specified under S.T.C. 6.03.171.

6.03.185 Hearing

The person requesting the appeal or reconsideration shall appear personally before the Tribal Council and state why and how the decision should be changed. The Tribal Council may hear the testimony of witnesses on both sides of the issue who have information relevant to the appeal or reconsideration. The hearing shall be electronically recorded where practicable.

6.03.186 Decision of the Tribal Council on Appeal or Reconsideration

The Tribal Council may affirm, reverse, or modify the decision being considered.

6.03.187 Appeal to Tribal Court

Any person who claims, in good faith, that the Skokomish Tribal Council made a mistake in interpreting this Act or made a mistake in procedure under this Act that affected the person's rights or interests shall have a right to appeal from the Tribal Council's decision under this Section. The appeal shall be heard by the Skokomish Tribal Court under the Rules of Appellate Procedure of the Rules of the Skokomish Tribal Court. These rules shall be modified, for the purpose of appeals under this Act, to utilize one (1) trial court judge in place of a panel of three (3) judges from the Skokomish Tribal Court of Appeals, and to substitute "Tribal Council" in place of "trial court" and "Tribal Court." The Tribal Court may reverse the Tribal Council decision only if:

- (a) The decision was clearly erroneous in view of the entire record as submitted and in light of the policies and goals of the Act; or
- (b) The decision violated the Constitution of the Skokomish Indian Tribe.

Archaeological or Historical Sites

6.03.195 Purpose

This Section establishes policies and procedures to protect archaeological and historic sites. The Skokomish Indian Reservation has been a place of habitation and use by Skokomish Indians for thousands of years. This long history means that the Reservation has many places, no longer discernible to the untrained eye, that were once sites of homes, villages, fishing camps, ceremonies, and other uses. The historical and cultural information obtainable from a professional archaeological examination of such sites is an invaluable and irreplaceable source of Tribal history. The discovery of this type of knowledge enriches all people in this region. Violation of the following policies or procedures resulting in destruction of or damage to this heritage is considered an extremely serious offense and the maximum sanctions allowable will be imposed.

6.03.196 Policies Regarding Archaeological and Historic Sites

- (a) Any application for a permit under this Act may be required to be reviewed by a professional archaeologist to determine whether the proposal poses any danger to known archaeological sites. A literature search shall be required in addition to a check of known or registered sites. The expense of such review shall be borne by the applicant.
- (b) If evidence of an archaeological site is unearthed during the construction of a project for which a permit has been issued, the project developer and/or the persons involved in construction must cease work and notify the Director and the Tribal Historical Preservation Officer immediately.
- (c) The Tribe reserves the right to conduct its own archaeological inspection of any construction, earthmoving, or excavation work on the Reservation.
- (d) The Tribe hereby reserves the right to halt construction of a project for up to 120 days if it deems that an archaeological site of importance to the Tribe may have been unearthed. During the 120 days, the Tribe must begin professional examination of the site to determine the significance. Extensions of the 120 day period will be allowed if needed to complete the work. The Tribe may condition the permit for the project after the discovery of the site and require a professional archaeological excavation or require modification of the activity to preserve the site. The expense of such examination and any excavation or modification of the activity shall be borne by the applicant.
- (e) Applicants may be required to post a deposit with the Tribe of up to \$5,000 to insure that notification of any archaeological evidence is made to the Tribe. The deposit is fully refundable if no archaeological site is unearthed, but will be forfeited if violation of these policies occurs.

6.03.197 Failure to Comply with Archaeological and Historic Sites Policies

- (a) The following actions are violations of this Ordinance:
 - (1) Failure to notify the Director or the Tribal Historic Preservation Officer when a cultural resource has been located and unearthed;
 - (2) Failure to halt construction on any site where a cultural resource has been located or unearthed;
 - (3) Digging, excavating, filling, or removal of artifacts or any other materials, including soil, sand and gravel without the express written approval of the Director and of the Tribal Historic Preservation Officer;
 - (4) Allowing the digging, excavating, filling, or removal of artifacts or any other materials, including soil, sand and gravel without the express written approval of the Director and of the Tribal Historic Preservation Officer; and

- (5) Injuring, defacing or destroying of any cultural resource
- (b) Any person who commits one of the violations listed in this section shall be issued a written notice of violation and subject to the enforcement provisions stated in S.T.C. 6.03.200 through S.T.C. 6.03.205.

Enforcement

6.03.200 Failure to Obtain and Comply with Permit

- (a) *Failure to Obtain a Permit.* Any person who fails to obtain a permit required under this Act shall be issued a notice of violation, which may include an order to cease and desist (stop work order).
- (b) *Failure to Comply with Permit.* Any person who fails to comply with the terms of a permit under this Act shall be issued a written notice of violation, which may include an order to cease and desist (stop work order).

6.03.201 Notice of Violation

The notice of violation shall describe the specific violation, the amount of the monetary penalty and, if applicable, shall order the violation to cease and desist or, in appropriate cases, require corrective action to be taken within a specific and reasonable time. The notice shall be given to the person directly or by certified mail with return receipt requested.

6.03.202 Civil Penalty

The civil penalty for failure to conform to the terms of a permit or for proceeding with an activity without a permit, as required under this Act, is a fine not to exceed \$5,000 for each violation. Each permit violation or each day of continued activity without a required permit shall constitute a separate violation.

6.03.203 Appeal from Penalty

Within 30 days after the notice is received, the person incurring the penalty may apply in writing to the Director to request that the penalty be reduced. The person must show good faith in complying with Act since the time the notice was received in order to have his or her request to reduce the penalty considered. The person may appeal the Director's decision to the Skokomish Tribal Council pursuant to the procedures in S.T.C. 6.03.180 through S.T.C. 6.03.186. The decision of the Tribal Council is final for the Tribe.

6.03.204 Enforcement of Penalty in Court

The Tribe may enforce its order to cease and desist and its assessment of a penalty in the Tribal Court. The Tribe may request the Court to enter an injunction against the continued activity, to order payment of the fine, and to order other remedies where appropriate. Failure of any person to abide by the lawful order of the Skokomish Tribal Court is punishable by civil and criminal

contempt of court proceedings.

6.03.205 Money Damages for Violation

Any person subject to this Act who violates any provision of this Act or permit issued under this Act shall be liable for all damage to property located within the Skokomish Indian Reservation resulting from such violation. Individual members of the Skokomish Tribal community and the Skokomish Indian Tribe may bring suit in the Skokomish Tribal Court for damages they have incurred as a result of the violation under this section. If liability is established and the Court orders restoration of the area effected, the Court shall make provision to assure that restoration is accomplished within a reasonable time and at the sole expense of the violator. The Court may order money damages, costs of the suit, and attorneys' fees to the prevailing party. Appeal from such a suit shall be brought in the Skokomish Court of Appeals. Failure of any person to abide by the lawful order of the Skokomish Tribal Court or Court of Appeals is punishable by civil and criminal contempt of court proceedings.