

TITLE 8
CONSERVATION, ECOLOGY & HUNTING/FISHING

Contents of Title 8

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Chapter 1 - (Reserved)

History: Former Chapter 1, Uniform Conservation Code of the Ottawa and Chippewa of Northern Michigan, originally enacted and amended by ordinance of the Tribal Council, was rescinded as a Tribal ordinance on December 15, 2004, by Tribal Act #04-22.1470. Said Act provides as follows:

BE IT RESOLVED, that the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians rescinds as tribal ordinances the comprehensive regulations governing the exercise of rights on both the Great Lakes and in inland areas of the territory ceded in the 1839 Treaty;

BE IT FURTHER RESOLVED, that the “CORA Regulations” shall continue to govern fishing activities upon the Great Lakes and the Tribe’s separate inland regulations (referenced as the “Uniform Conservation Code of the Ottawa and Chippewa of Northern Michigan” but enacted as separate Grand Traverse Band regulations) shall continue to govern tribal members, the current version being the “2004/2005 Hunting, Fishing, Trapping, Gathering Regulations revised July 21, 2004.”

Chapter 2 - (Reserved)

History: Former Chapter 2, Treaty and Commercial Fishing, originally enacted as Part 1, Chippewa-Ottawa Treaty Fishery Management (COTFMA) Regulations [adopted on September 1, 1995 by the Chippewa/Ottawa Treaty Fishery Management Authority (of which the Grand Traverse Band is a member)], and Part 2, GTB Regulations for Tribal Commercial Fishermen [adopted and amended by Tribal Council ordinance], were rescinded as Tribal ordinances on December 15, 2004, by Tribal Act #04-22.1470. Said Act provides as follows:

BE IT RESOLVED, that the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians rescinds as tribal ordinances the comprehensive regulations governing the exercise of rights on both the Great Lakes and in inland areas of the territory ceded in the 1839 Treaty;

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Chapter 3 - Soil Erosion and Stormwater Runoff Control

§ 301 - Purpose and Objective

- (a) Purpose. The purpose of this ordinance is to prevent the pollution, impairment, or destruction of a natural resource or the public trust on Tribal lands unless:
 - (1) there is no feasible and prudent alternative and
 - (2) the activity is consistent with the promotion of the public health, safety and welfare in light of the Tribe's paramount concern for protection of the natural resources.
- (b) Objectives. Specific objectives include the following:
 - (1) To prevent accelerated soil erosion and to control stormwater runoff resulting from earth changes proposed within the Tribal lands, both during and after construction.
 - (2) To assure that the Tribe and Tribal members control the volume and rate of stormwater runoff originating from Tribal lands so that surface water and groundwater quality is protected, soil erosion is minimized, and flooding potential reduced.
 - (3) To develop specific penalties for violations regarding this ordinance.

History: Soil Erosion and Stormwater Runoff Control Ordinance, adopted by Tribal Council on January 21, 1997.

§ 302 - Definitions

The following terms and phrases shall have the meaning given herein, unless the context otherwise requires:

- (a) "accelerated soil erosion": the increased movement of soils that occurs as a result of human activities and development.
- (b) "best management practice (BMP)" - structural device, measure, facility, or activity which helps to achieve soil erosion and stormwater management control objectives at a designated site.
- (c) "channel" - the portion of a natural stream which conveys normal flows of water, or a ditch or channel excavated for the flow of water.
- (d) "commercial use" - all land uses. The use of property in connection with the purchase, sale, display, or exchange of goods, merchandise, or personal services, as well as the maintenance or operation of businesses or recreational or amusement enterprises.

- (e) “control plan” - Soil Erosion and Stormwater Runoff Control Plan
- (f) “conveyance facility” - a surface or subsurface structure or channel which transports stormwater runoff.
- (g) “drain” - drains established and/or constructed.
- (h) “depression storage” - the portion of precipitation trapped in depressions in the ground surface.
- (i) “design standard (or engineering design standard)” - a specification that prescribes the type of design, location, mode of construction, mode of operation, or other engineering detail for soil erosion or stormwater control facilities.
- (j) “design storm” - a rainfall event that has a specific statistical probability of occurring in any given year. For example, a 2-year design storm is a storm with a fifty percent (50%) chance of occurring during the year. Design storm figures are used to calculate the runoff volume and peak discharge rate through a detention or retention basin or other stormwater management facility.
- (k) “designated use” - the use of a stream segment assigned by the Tribe as part of the regulatory process of establishing water quality control standards. Uses maybe public drinking water supply, irrigation, recreational use, fishing, or other categories, as established by the Tribe.
- (l) “detention basin” - a structure or facility, natural or artificial, which stores stormwater on a temporary basis and releases it at a controlled rate. A detention basin may drain completely after a storm event, or it may be a body of water with a fixed minimum and maximum water elevation between runoff events.
- (m) “discharge” - the rate of flow of water through an outlet structure at a given point and time, measured in cubic feet per second (cfs).
- (n) “disturbed area” - an area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling.
- (o) “drainage” - the interception and removal of groundwater or surface water by natural and artificial means.
- (p) “drainage well” - a bed of stone or hole in the ground constructed for the purpose of trapping stormwater for infiltration into the ground.
- (q) “downstream” - lands and waters which receive stormwater runoff and other surface water flows from a designated site.
- (r) “drainage system” - all facilities, channels, and areas which serve to convey, filter, store, and/or receive stormwater, either on a temporary or permanent basis.

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- (s) “earth change” - a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the Tribal lands. The term “earth change”, as used in this ordinance, shall not apply to the practice of plowing or tilling soil for the purpose of crop production.
- (t) “enforcement officer” - person(s) or entities designated by the Tribal Council to enforce this ordinance including permit administration.
- (u) “environmentally sensitive sites” - includes site with one or more of the following characteristics:
 - (1) Sites where driveways have been planned with a slope greater than ten percent (10%) (10 feet horizontal to 1 foot vertical).
 - (2) Sites with heavy clay soils (commonly termed hardpan clay), and soils classified in hydrological Group D in the soil surveys published by the Soil Conservation Service, U.S. Department of Agriculture.
 - (3) Sites which may cause sedimentation or flood onto adjacent land areas if earth changes occur.
 - (4) Sites located within one hundred (100) feet of a wetland.
 - (5) Other environmentally sensitive sites identified by the Tribal government as having a high potential for environmental degradation including flooding as a result of soil erosion or stormwater runoff on-site or off-site.
- (v) “erosion” - see “soil erosion” definition.
- (w) “excess runoff” - surface runoff that cannot be accommodated satisfactorily by the natural or planned drainage systems.
- (x) “extended detention basin” - detention basin designed to provide substantial removal of suspended solids and particulates, typically achieved by holding stormwater for twenty-four (24) hours or more.
- (y) “fill material” - soil, sand, gravel, clay, or any other non-polluting material which displaces soil or water or reduces water retention potential in a lake, pond, stream, or wetland.
- (z) “flood” - an overflow of surface water onto lands not normally covered by water. Floods have these essential characteristics: the inundation of land is temporary and results from unusually heavy precipitation; and the land is inundated by overflow for a lake, pond, stream, and/or wetland, or is flooded by natural runoff.
- (aa) “floodplain” - the area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal channel. For mapping purposes, floodplains are

designated according to the frequency of the flood event, such as the 100-year floodplain or 500-year floodplain.

- (bb) “grading” - any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.
- (cc) “impervious area” - impermeable surfaces, such as paved or gravel driveways, parking areas, or roads which prevent the infiltration of water into the soil.
- (dd) “industrial use” - any manufacturing, fabrication, assembly, printing, or improvement of articles or merchandise; warehousing, wholesaling, or storage of goods, vehicles, or materials; research and medical laboratories; mining and activities related to mineral extraction and processing; and other business enterprises not classified as commercial.
- (ee) “infiltration” - the downward movement or seepage of water from the surface to the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.
- (ff) “infiltration facility” - a structure or area which allows stormwater runoff to gradually seep into the ground, e.g. french drains, seepage pits, infiltration basin, dry well, or perforated pipe.
- (gg) “lake” - a permanent body of open water which is five (5) acres or more in size.
- (hh) “land owner/lessee” - the Tribe or any allottee/lessee of Tribal lands, including subsidiary commissions or entities.
- (ii) “land use” - a use of land which may result in an earth change, including but not limited to subdivision, site condominium, residential, commercial, industrial, recreational, agricultural practices, other development, private and public highway, road and/or stream crossing construction, and drainage construction.
- (jj) “land use committee” - the Committee created by the Tribal Chairperson and/or Tribal Council responsible for administering the provisions of this ordinance, including successor committee(s) designated by a different title.
- (kk) “landscaping” - mowing, seeding, sodding, and other landscaping activities which are not earth changes.
- (ll) “maintenance agreement” - a binding agreement between the Tribal member and the Tribe which sets forth the location and design of best management practices, as well as the terms and requirements for stormwater and erosion control facility maintenance recorded with the Tribal Register of Deeds.
- (mm) “material” - soil, sand, gravel, clay, or any other organic or inorganic material which is not municipal refuse.

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- (nn) “non-erosive velocity” - a rate of flow of stormwater runoff, measured in feet per second, which does not erode soils. Non-erosive velocities vary for individual sites, taking into account topography, soil type, and runoff rates.
- (oo) “normal maintenance” - landscaping, repairs, road leveling, minor excavation or filling at a developed site, or other activities determined by the Land Use Committee to be exempt from permit requirements, provided that such activities do not violate standards in this ordinance.
- (pp) “off-site facility” - stormwater management or erosion control facility which is located partially or completely off the development site.
- (qq) “ordinary high water mark” - the line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake which has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.
- (rr) “outfall” - the point where water flows out from a conduit, drain or stream.
- (ss) “outlet” - a stream or facility receiving the flow from a basin, drain, or other stormwater management facility.
- (tt) “peak rate of discharge (peak flow)” - the maximum calculated rate of stormwater flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm or flood, measured in cubic feet per second (cfs).
- (uu) “permit” - soil erosion and stormwater runoff control permit.
- (vv) “person” - any individual, partnership, company, organization or legal entity of any kind, including governmental agencies.
- (ww) “pollution” - degradation of water quality, preventing the use of water for some specific purpose, caused by a natural or human-made substance.
- (xx) “pond” - a permanent or temporary body of open water which is more than one acre in size and less than five (5) acres in size.
- (yy) “protected wetland” - a wetland which meets one or more of the following criteria:
 - (1) a wetland which is within five hundred (500) feet of a lake or stream;
 - (2) a wetland which is five (5) or more acres in size;
 - (3) a wetland set aside for protection by the Tribal Council; or

- (4) a wetland subject to regulation by the federal government.
- (zz) “receiving body of water” - any lake, pond, stream, wetland, or groundwater into which stormwater runoff is directed.
- (aaa) “regional detention basin” - a basin to detain water flow from a number of development sites or a small watershed.
- (bbb) “retention basin” - a wet or dry stormwater holding area, either natural or human-made, which does not have an outlet to adjoining watercourses or wetlands other than an emergency spillway.
- (ccc) “runoff” - stormwater runoff.
- (ddd) “sediment” - mineral or organic solid particulate matter that has been removed from its site of origin by: 1) soil erosion; 2) suspension in water; and/or 3) wind or water transport.
- (eee) “sedimentation” - the process or action of depositing sediment.
- (fff) “site” - any tract, lot, or parcel of land or combination of tracts, lots or parcels of land proposed for development.
- (ggg) “soil erosion” - the wearing away of land by the action of wind, water, gravity, or a combination thereof.
- (hhh) “soil erosion control facilities and measures” - any structure, facility, barrier, berm, vegetative cover, basin, or other measure which serves to control soil erosion in accordance with the purposes and standards of this ordinance. “Temporary measure” refers to installations designed to control soil erosion during construction or until soils in the contributing drainage area are stabilized. “Permanent measure” refers to installations designed to control soil erosion after a project is completed.
- (iii) “soil erosion and stormwater runoff control plan” - maps and written information for a proposed land use or earth change which describe the way in which soil erosion and stormwater runoff will be controlled, during and after completion of construction.
- (jjj) “soil erosion and stormwater runoff control permit” - signed, written statement issued under this ordinance authorizing the applicant to engage in specified earth changes.
- (kkk) “stop-work order” - a notice issued by the enforcement officer(s) designated by the Tribal Council or an authorized agent of the Tribe to the permittee to require the permittee to cease grading or development activities.
- (III) “storage facility” - a basin, structure, or area, either natural or human-made, which is capable of holding stormwater for the purpose of reducing the rate of discharge from the site.

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- (mmm) “storm drain” - a conduit, pipe, natural channel or human-made structure which serves to transport stormwater runoff.
- (nnn) “storm frequency” - the average period of time during which a storm of a given duration and intensity can be expected to be equaled or exceeded.
- (ooo) “stormwater control facilities and measures” - any facility, structure, channel, area, or vegetative cover, or measure which serves to control stormwater runoff in accordance with the purpose and standards of these regulations.
- (ppp) “stormwater runoff” - waters from rains falling within a tributary drainage basin, flowing over the surface of the ground or collected in channels, watercourses, or conduits, measured in depth of inches.
- (qqq) “stream” - a river, stream, or creek which may or may not be serving as a drain which has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.
- (rrr) “stream bank” - the usual boundaries, not the flood boundaries, of a stream channel.
- (sss) “stripping” - any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- (ttt) “swale” - low-lying grassed area with gradual slopes which transports stormwater, either on-site or off-site.
- (uuu) “timber” - forest, trees, wood for building.
- (vvv) “vegetative cover” - grasses, shrubs, trees, and other vegetation which hold and stabilize soils.
- (www) “water quality standards” - minimum standards established by the United States Environmental Protection Agency Region V or standards established by the Tribe.
- (xxx) “watercourse” - any natural or human-made waterway, drainage-way, drain, river, stream, diversion, ditch, gully, swale, or ravine having banks, a bed and a definite direction or course, either continuously or intermittently.
- (yyy) “watershed” - a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.
- (zzz) “wetland” - land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstance, does support wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh. A wetland will contain a predominance, not just an occurrence, of wetland vegetation, aquatic life, or hydric soil.

- (aaaa) “wetland vegetation” - plants, including but not limited to trees, shrubs, and herbaceous plants, that exhibit adaptations to allow, under normal conditions, germination or propagation, and to allow growth with at least their root systems in water or saturated hydric soil.

History: Soil Erosion and Stormwater Runoff Control Ordinance, adopted by Tribal Council on January 21, 1997.

§ 303 - Permit Requirements

- (a) Jurisdiction for Permit Administration
- (1) The enforcement officer(s) designated by Tribal Council shall enforce regulated earth changes proposed within the boundaries of the Tribal lands.
 - (2) Earth changes carried out by the Tribe, subsidiary commissions, enterprises, etc. and individuals or other entities within the Tribe’s jurisdiction shall abide by this ordinance.
- (b) Regulated Earth Changes. Earth changes requiring a soil erosion and stormwater runoff control permit from the enforcement officer(s) designated by the Tribal Council include the following:
- (1) Earth changes connected with any of the following activities which disturb land within five hundred (500) feet of a lake or stream, except for normal maintenance:
 - (A) Transportation facilities, including streets, access roads, railroads, airports, common carrier pipelines, and mass transit facilities, except normal maintenance procedures such as earth or gravel road leveling and minor repairs or alterations to rights-of-way not affecting a lake or stream.
 - (B) Site preparation for a single-family residence and multiple family residential developments.
 - (C) Tribal buildings and service facilities, including but not limited to government buildings and facilities, commercial buildings, schools, vehicle maintenance facilities, and salt storage facilities.
 - (D) Recreational facilities, including but not limited to parks, golf courses, beaches above the ordinary high water mark, campgrounds or trails, including Tribal or private facilities.
 - (E) Utilities, including but not limited to underground pipelines or cables, except pole installation, service line and other earth changes of a minor nature, and emergency repairs.
 - (F) Oil, gas, and mineral wells. Access roads to well production sites shall be subject to permit requirements.

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- (G) Non-agricultural water impoundments and waterway construction or improvements.
 - (H) Logging activities including access roads, except the principal area where the trees are being cut
 - (I) Mining activities including access roads, except the principal area where minerals are being removed.
 - (J) Earth changes on agricultural lands, including road construction and building construction, but not including plowing and tilling of soil for the purpose of crop production.
- (2) Earth changes for environmentally-sensitive residential sites.
 - (3) Industrial or commercial use development sites, regardless of size, location, or environmental sensitivity.
 - (4)
 - (A) All developments which includes housing, commercial, subsidiary enterprises, individual or other entity developments within the Tribe's jurisdiction regardless of size, location, or environmental sensitivity.
 - (B) All multi-family developments regardless of size, location or environmental sensitivity.
- (c) Identification of Environmentally-Sensitive Sites
- (1) Tribal land owners and lessees are responsible for determining whether their sites are environmentally-sensitive as defined in this ordinance (§ 302(u)).
 - (2) The Tribal administration and/or the county conservation district shall be requested to provide assistance to land owners and lessees in identifying earth changes and environmentally-sensitive sites subject to review by the enforcement officer(s) designated by the Tribal Council.
- (d) Permit Application Submittal
- (1) All applications for soil erosion and stormwater runoff control permits shall include one copy of the proposed soil erosion and stormwater runoff control plan unless more copies are requested by the enforcement officer(s) designated by the Tribal Council.
 - (2) Permit applications shall be submitted to the enforcement officer(s) designated by the Tribal Council.

- (3) Application for a permit shall be made prior to the start of any earth change including construction of access roads, driveways, cutting of trees/timber and stump removal, or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of these procedures regardless of any later actions taken toward compliance. Soil test borings, vegetative cutting for land surveys, percolation tests, and normal maintenance shall not be considered a start of work under these regulations.
 - (4) The application review period begins upon receipt of a completed application.
- (e) Sequential Applications
- (1) On projects which are so large or complex that a plan encompassing all phases of the project cannot be reasonably be prepared prior to initial groundbreaking, application for permit on successive major incremental applications shall be approved by the enforcement officer(s) designated by the Tribal Council prior to the submittal of a permit application.
 - (2) Approval of sequential applications shall take place in phases. The overall conceptual plan for the entire development shall be submitted for review and approval. And, detailed plans for sections of the total project may be submitted for review and approval.
 - (3) All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered. Each phase of the project must be reviewed and permitted prior to construction.
- (f) Permit Approval or Disapproval
- (1) If the enforcement officer(s) designated by the Tribal Council determines that the proposed soil erosion and stormwater runoff control plan complies with the standards of this ordinance, a permit shall be issued specifying the work approved. If the proposed plan does not comply with these standards, the permit request shall be modified or denied.
 - (2) Upon request, the enforcement officer(s) designated by the Tribal Council shall furnish the applicant or other interested person with a statement in writing of the reasons for permit denial or approval.
 - (3) If necessary, the enforcement officer(s) designated by the Tribal Council may request additional information from the applicant.
- (g) Permit Expiration or Revocation
- (1) Permits shall terminate automatically if construction has not commenced within one year of the date of issuance. The permit holder may request a one year extension if there are valid reasons to support such an extension.

- (2) Any permit issued by the enforcement officer(s) designated by the Tribal Council under this ordinance may be revoked or suspended, after notice and an opportunity for a hearing, for any of the following causes:
 - (A) A violation of a condition of the permit.
 - (B) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or soil erosion and stormwater runoff control plan.
 - (C) A change in a condition that requires a temporary or permanent change in the activity.

- (h) Administration Fee Schedule
 - (1) The Tribal Council may adopt a fee schedule for administration of this ordinance.
 - (2) Permit fees shall be directly related to the actual costs of administering the soil erosion control and stormwater management permit program of the enforcement officer(s) designated by the Tribal Council, including site inspection costs and permit administration costs.
 - (3) The fee schedule shall be proposed by the enforcement officer(s) designated by the Tribal Council and approved by the Land Use Committee and Tribal Council.

- (i) Penalties for Initiating Earth Change Activities Without a Permit. Any earth change activities without a valid permit or in violation of a permit or permit conditions shall be considered a violation of this ordinance and subject to fines and other penalties as provided in this ordinance.

- (j) Issuance of Land Use and Building Permits
 - (1) The Tribal Council through recommendation by the Land Use Committee, which recommends land use permits and/or building permits for approval to Tribal Council shall notify the enforcement officer(s) designated by the Tribal Council upon receipt of an application involving an earth change subject to permit requirements under this ordinance.
 - (2) The Tribal Council shall not issue a land use/building permit for an earth change subject to permit requirements until a soil erosion and stormwater runoff control permit has been issued by the enforcement officer(s) designated by the Tribal Council.
 - (3) The Tribal land owner or lessee shall notify the enforcement officer(s) designated by the Tribal Council after a permit decision has been made.

- (k) Soil Erosion and Stormwater Runoff Control Plan. A soil erosion and stormwater runoff control plan shall be prepared for any earth change subject to permit requirements. The

plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during construction and after construction is completed.

- (1) Residential Development or Environmentally Sensitive Site Plans for Earth Changes. A residential or environmentally sensitive site plan shall show the following:
 - (A) Location of the site.
 - (B) Site characteristics, such as location of lake, stream, wetlands or existing buildings.
 - (C) Proposed earth change activity.
 - (D) Erosion control measures proposed.
If there are severe development limitations in regards to the existing site characteristics, the enforcement officer(s), designated by the Tribal Council, may require that a residential or environmentally sensitive plan be prepared by one of the following registered professionals: civil engineer, land surveyor, architect, and/or landscape architect.
- (2) Other Land Uses, Site Plans for Section III-B Earth Changes. The submitted site plans shall show the following:
 - (A) A map or maps at a scale of not more than two hundred (200) feet to the inch or as otherwise determined by the enforcement officer(s) designated by the Tribal Council, including a legal description and site location sketch which includes the proximity of any proposed earth change to lakes or streams or both; predominant land features; and contour intervals or slope description.
 - (B) A soils survey or written description of the soil types of the exposed land area contemplated for the earth change.
 - (C) A description and the location of the physical limits of each proposed earth change.
 - (D) Location of all lakes, streams, and protected wetlands partially or completely contained within the boundaries of the site or within fifty (50) feet of the site boundary.
 - (E) A description and the location of all existing and proposed on-site stormwater management facilities and measures.
 - (F) The timing and sequence of each proposed earth change.
 - (G) A description and the location of all proposed temporary soil erosion control facilities and measures.

- (H) A description and the location of all proposed permanent soil erosion control facilities and measures.
 - (I) Stormwater runoff calculations.
 - (J) A program for the continued maintenance of all permanent soil erosion and stormwater runoff control facilities and measures as listed in § 303(n).
 - (K) Other information which the enforcement officer(s) designated by the Tribal Council requires to review the impact of the proposed earth change in relationship to the standards and requirements of this ordinance.
- (3) Housing Plat Site Plan. The permittee shall submit the same information as in § 303(k)(2) of this ordinance and may need to submit additional information including but not limited to the following: off-site watershed boundaries; existing and proposed easements, and proposed drainage system including water movement onto and out of the proposed plat.
- (4) Road Construction. The construction of roads on Tribal lands shall make the best effort to meet the goals and guidelines of this ordinance for soil erosion and stormwater runoff on all new roads constructed after the adoption of this ordinance. Stormwater retention/detention shall be compatible to the current highway safety guidelines, maintenance practices, and general drain laws that govern natural surface water flow, concentration, location and/or velocity.
- (l) General Standards for Approval of Soil Erosion and Stormwater Control Plans.
- (1) The enforcement officer(s) designated by the Tribal Council, shall approve or disapprove soil erosion and stormwater runoff control permit applications and plans in accordance with published guidelines.
 - (2) All earth changes subject to review under requirements of this ordinance shall be designed, constructed, and maintained to provide for the detention of flood waters and to protect water quality.
 - (3) Measures required for soil erosion and stormwater runoff control shall take into consideration natural features, proximity of the site to lakes, streams, and protected wetlands, extent of impervious surfaces, potential for soil erosion and flooding, and the size of the site.
 - (4) Stormwater conveyance, storage, and infiltration facilities shall be designed to provide for non-erosive velocities of stormwater runoff.
 - (5) Alterations to natural drainage patterns shall not create or increase downstream flooding or sedimentation.
 - (6) When a proposed earth change is located in an area where a watershed plan has been approved by the Land Use Committee and Tribal Council, the standards for

stormwater detention and retention volumes, discharge rates, and stormwater facility locations specified in the approved watershed plan shall be deemed to meet the requirements of this ordinance.

(m) Off-Site Stormwater Control

- (1) **Waiver Option.** In lieu of on-site stormwater facilities and measures, the use of off-site stormwater facilities and measures, together with on-site erosion control, may be proposed. In such cases, a request for a waiver of the requirements for on-site stormwater runoff control can be made. The waiver request shall be submitted to the enforcement officer(s) designated by the Tribal Council, with a permit application and a soil erosion and stormwater runoff control plan, including information specified in § 303(k) of this ordinance. This waiver option does not allow for changes in the requirements for on-site soil erosion control.
- (2) **Shared Off-Site Stormwater Control Facilities**
 - (A) Off-site stormwater control areas may be shared between two or more properties or developments, provided that maintenance agreements have been approved by the enforcement officer(s) designated by the Tribal Council, and easements have been obtained and recorded.
 - (B) Stormwater management easements are required for all areas used for off-site stormwater control unless an exception has been granted by the enforcement officer(s) designated by the Tribal Council. Easements shall be recorded with the Tribal Register of Deeds prior to approval of the final development plan by the enforcement officer(s) designated by the Tribal Council.
- (3) **Applicable Standards.** General Standards specified in § 303(1) of this ordinance shall be used in reviewing proposed soil erosion and stormwater runoff control plans for off-site stormwater facilities and measures.

(n) Maintenance

- (1) All soil erosion and stormwater runoff control facilities and measures shall be maintained in accordance with permit conditions.
- (2) The person(s) or Tribal department responsible for maintenance shall be designated in the Soil Erosion and Stormwater Runoff Control Plan or in the permit application submitted to the enforcement officer(s) designated by the Tribal Council. Options include:
 - (A) The owner or lessee of the property.
 - (B) The Tribal department, provided that provisions for financing necessary maintenance are included in the deed restrictions or other contractual agreements.

- (C) The enforcement officer(s) designated by the Tribal Council may set up a drainage district.
- (3) The enforcement officer(s) designated by the Tribal Council will make the final decision of what maintenance option is appropriate in a given situation. Natural features, proximity of site to lakes, streams and protected wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision.
- (o) Stormwater Management Easements
 - (1) Stormwater management easements shall be provided by the Tribe if necessary for: A) access for facility inspections and maintenance, or B) preservation of stormwater runoff conveyance, infiltration, and detention year storm event. The purpose of the easement shall be specified in the maintenance agreement signed by the property owner or lessee.
 - (2) Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the enforcement officer(s) designated by the Tribal Council.
 - (3) Easements shall be recorded with the Tribal Register of Deeds prior to issuance of a certificate of compliance by the enforcement officer(s) designated by the Tribal Council (see following § 303(p)(2)).
- (p) Compliance Assurances
 - (1) Construction Certification by Registered Professional. For any sites that required a professional site plan, a certification letter shall be submitted after soil erosion and stormwater runoff control facilities have been installed to affirm that construction has been completed in accordance with the approved Soil Erosion and Stormwater Runoff Control Plan. This certification letter can be prepared by one of the following registered professionals: civil engineer, land surveyor, architect, and/or landscape architect unless it was specified by the enforcement officer(s) designated by the Tribal Council that a civil engineer prepare a plan. If there are changes during the course of construction, the enforcement officer(s) designated by the Tribal Council may require final “as built” drawings for final approval of the site work.
 - (2) Certificate of Compliance. Upon receipt and approval of the certification letter, the enforcement officer(s) designated by the Tribal Council shall issue a certificate of compliance to the property owner or lessee.
- (q) Inspections
 - (1) Enforcement officer(s) designated by the Tribal Council may enter at reasonable times upon any property to conduct on-site inspections. Such inspections may take

place before, during and after any earth change activity for which a permit has been issued.

- (2) If, upon inspection, site conditions are found not to be as stated in the permit or approved Soil Erosion and Stormwater Runoff Control Plan, the permit will be invalid. No earth disrupting work shall be undertaken, or continued, until revised plans have been submitted and a valid permit issued.
 - (3) Requests for revisions must be submitted in writing to and approved by the enforcement officer(s) designated by the Tribal Council before being effective unless approved by the field inspector on the site. If approved, a revised site plan shall be submitted for review and approval.
- (r) Stop-Work Orders and Emergency Actions
- (1) If necessary to assure compliance with the permit requirements, standards, and other provisions of this ordinance, or to protect public health, safety and welfare, the enforcement officer(s) designated by the Tribal Council may issue a stop-work order for the purpose of preventing or minimizing accelerated soil erosion, stormwater runoff, or other conditions posing imminent and substantial danger to public health, safety, welfare, or natural resources.
 - (2) If necessary to protect public safety or water resources, including lakes, streams, protected wetlands, and other receiving bodies of water, the enforcement officer(s) designated by the Tribal Council may initiate emergency action to abate imminent and substantial danger and risk.
 - (3) Except as otherwise provided through maintenance agreements, the land owner/lessee may be held responsible for reimbursing the Tribe for all costs incurred as a result of emergency action, including administrative costs, provided that a finding is made that the land owner/lessee violated provisions of this ordinance, a permit, or an approved maintenance agreement.
 - (4) The stop-work order, when issued, shall require all specified earth change activities to be stopped.
 - (5) If the enforcement officer(s) designated by the Tribal Council determines that soil erosion and sedimentation of the waters regarding this Tribe has or will reasonably occur from a parcel of land in violation of this ordinance, it may seek to enforce the ordinance by notifying the person who owns the land or leases the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of specific soil and sedimentation control measures which, if implemented by the land owner or lessee, would bring the owner or lessee into compliance.
 - (6) A person who owns land or leases land subject to this ordinance shall implement and maintain soil erosion and stormwater runoff control measures in conformance

with this ordinance within ten (10) days after the notice of violation has been given as specified in subsection (5) above.

(s) Enforcement Action

- (1) All earth changes on Tribal lands are subject to the enforcement provisions and penalties of this ordinance.
- (2) A person who owns or leases the land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.
- (3) The enforcement officer(s) designated by the Tribal Council shall notify the Land Use Committee of all violations of this ordinance, including violations attributable to an earth change created by an authorized Tribal agency.
- (4) Each act of violation, and every day upon which any violation shall occur or continues to occur, shall constitute a separate offense.
- (5) A person who has not complied with this ordinance and who, after notice, refuses to implement and maintain soil erosion control and stormwater runoff control measures and facilities in conformance with these regulations shall be subject to a fine of not more than five hundred dollars (\$500.00) or thirty (30) days in jail, or both; plus the cost of prosecution, remediation expenses and/or restitution may also be ordered as costs.

(t) Right of Appeal

- (1) The Land Use Committee may recommend that the Tribal Council approve a variance of this ordinance if there is no feasible and prudent alternative. The Land Use Committee also has jurisdiction to consider zoning variances including suggested setbacks when a zoning variance is currently considered. If a zoning variance is approved, it must be ratified by the Tribal Council.
- (2) Any person aggrieved by the action or inaction of the enforcement officer(s) designated by the Tribal Council related to this ordinance may appeal to the Land Use Committee.
- (3) The Land Use Committee shall conduct an administrative hearing of any appeals. A complete record of the hearing shall be prepared if an aggrieved person determines to appeal to the Tribal Court.
- (4) The appeal to the Tribal Court shall be an administrative appeal and not a trial *de novo*.

- (u) Severability. If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by the Tribal Court, the remainder of the ordinance shall not be affected.
- (v) Effective Date. The ordinance shall take effect when approved by the Tribal Council.

History: Soil Erosion and Stormwater Runoff Control Ordinance, adopted by Tribal Council on January 21, 1997.

**Chapter 4 - Tribal Implementation of 26 U.S.C. § 7873;
“Income derived by Indians from the exercise of fishing rights”**

§ 401 - GTB Tribal Policy to Defend This Chapter in Federal Tax Proceedings

- (a) It shall be the Tribal Policy of the Grand Traverse Band of Ottawa and Chippewa Indians (GTB, Tribe), acting as a government, to defend this chapter as a reasonable interpretation of the Tribe’s governmental obligation to its members in interpreting 26 U.S.C. § 7873 consistent with existing federal law and the additional Tribal Constitutional obligation of the Tribal government to individual Tribal members to protect treaty rights to “fish, hunt, trap and gather food.” GTB Constitution, Article X, Section 2.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 402 - Purpose

- (a) The purpose of this chapter is to state the public policy of the Tribe and to establish a method of implementing the Tribal public policy on the scope and application of 26 U.S.C. § 7873 for purposes of Tribal employees claiming the exemption via a percentage allocation made by the employee and verified by the GTB Human Resources Department.
- (b) This Tribal statute is implemented pursuant to 25 U.S.C. § 476, (Tribal constitutional organization); 25 U.S.C. § 450 et seq. (as an act of Self-Governance); Article IV, Section 1(c) of the Tribal Constitution (powers of the Tribal Council to make laws); and Article XI, Section 2 of the Tribal Constitution (Land Use and Natural Resources Conservation Plans Required).

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 403 - Applicability and Scope; Damages; Third Party Rights

- (a) This chapter shall apply to all Tribal members and members of other federally recognized who share in the treaty right established by Article 13 of the 1836 Treaty of Washington, 7 Stat. 491 (March 28, 1836). Further, the case law decision and the continuing Consent Decree in U.S. v. Michigan, 471 F. Supp. 192 (W.D. Mich. 1979), aff’d as modified, 653 F.2d 277 (6th Cir. 1981), cert denied 454 U.S. 1124 (1981), controlling the Article 13 treaty right shall be used as interpretive authority to determine the scope of the application of 26 U.S.C. § 7873.

- (b) The scope of this chapter is strictly limited to the Tribe acting in its capacity as a tribal government. This chapter is not intended to, and does not, create any enforceable rights against the Tribe as a government for monetary damages by Tribal members or third party rights against the Tribe for monetary damages.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 404 - Authority

- (a) Statutory. 26 U.S.C. § 7873; S. Rep. No. 445, 100th Cong., 2nd Sess. (1988); H. Rep. No. 312 (part 2) 100th Cong., 2nd Session (1988); 25 U.S.C. § 7871; 25 U.S.C. § 476; and 25 U.S.C. § 450 et seq.
- (b) Non-statutory. Notice 89-43, 1989-121.R.B. 80, Internal Revenue Manual Handbook No. 4231 Section 533; U.S. v. Michigan, supra; Employment Tax Guide Indian Tribal Governments, Publication of IRS 1-877-829-5500 (ETGITG) (www.irs.gov/tribes last visited on April 18, 2006); FAQs regarding IRC Section 7873 (Fishing Rights) <http://www.irs.gov/govt/tribes/article/0,,id=102508,00.html> last visited on April 18, 2006); Hall v. Commissioner of Internal Revenue, T.C. Memo. 1998-336, 1998 WL 646609; Warbus v. Commissioner of Internal Revenue, 110 T.C. 279 (1998); “American Indian Law Meets the Internal Revenue Code: Warbus v. Commissioner,” 74 N. D. L. Rev. 691 (1998); IRS Priv. Ltr. Rul. 200511006 (Nov. 23, 2004); IRS Tech. Adv. Mem. 9747004 (Jul. 25, 1997).
- (c) For purposes of this chapter, the above authority shall control interpretations of all factual patterns that may arise in the implementation and application of this chapter by departments of the Tribe. Departments of the Tribe shall refer to the above authorities and shall consult with the Tribe’s Legal Department as necessary or appropriate in implementing and applying this chapter.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 405 - Definitions

- (a) “Fishing rights-related activity” means any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of the Tribe, or to selling fish, if substantially all the harvesting was performed by members of the Tribe.
- (b) “Income” means the weekly wages paid by the Tribe to an employee of the “Qualified Indian entity” under 26 U.S.C. § 7873.
- (c) “Qualified Indian entity,” means the Grand Traverse Band of Ottawa and Chippewa Indians acting as a governmental entity as stated in § 408 of this chapter.

- (d) “Recognized fishing rights” means the Article 13 treaty right in the Treaty of Washington and recognized in *U.S. v. Michigan*, supra.
- (e) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 406 - Federal Tax Exemption

26 U.S.C. § 7873(a)(1) provides an exemption from federal income tax on income, including wages, derived by members of the Tribe in the exercise of a fishing rights-related activity of the Tribe. 26 U.S.C. § 7873(a)(2) provides an exemption from federal employment taxes, including FICA taxes, on wages paid to members of the Tribe for services performed in a fishing rights-related activity of the Tribe.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 407 - “Physical Activity” Test

“Fishing rights-related activity” includes any part of the physical acts of harvesting, processing, transporting, or selling fish.

- (a) Persons eligible under this test include the following:
 - (1) Fishers, processors (including smoking), and transporters.
 - (2) Hatchery workers.
- (b) Employees of the Tribe in the category denominated in this § 407 shall be eligible to make percentage allocation in support of the “directly related to” test and follow the procedure outlined in § 409 requiring consultation with the GTB Human Resources Department for purposes of claiming the exemption under the provisions of 26 U.S.C. § 7873.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 408 - “Governmental and Regulatory Support” Test

“Fishing rights-related activity” also includes the Tribal governmental activities related to the overall structure of treaty-protected behavior that the Tribe, as a government, engages in to protect, manage, regulate and implement the treaty-protected fishing rights and from which Tribal members, or members of other Tribes under Article 13 of the 1836 Treaty of Washington, whether as Tribal governmental employees or Tribal Councilors, derive income. See: S. Rep. No. 100 at 475 (1988) (“In the case of...a qualified Indian entity, the bill exempts from income, social security, and other tax, only that income “derived” from fishing rights-related activities.”). This is the “governmental and regulatory support” test for coverage of individuals involved in these activities.

- (a) Persons eligible under this test include the following:
 - (1) Conservation officers.
 - (2) Environmental technicians.
 - (3) Fishers biologist.
 - (4) Fishers technicians.
 - (5) Fishery habitat policy analysts.
 - (6) Water quality biologist.
 - (7) Habitat inventory and assessment technician.
 - (8) Enforcement staff.
 - (9) Tribal Court personnel.
 - (10) Support staff, i.e., secretary, accounting, payroll.
 - (11) Legislative analyst.
 - (12) Information and education services.
 - (13) Data analyst.
 - (14) Policy analyst.
 - (15) Public information staff.
 - (16) Air/Water/Earth Quality Specialist.

- (b) In general for purposes of this chapter, eligible persons under this test include all employees of the qualified Indian entity/Tribe who participate in the following Tribal categorical governmental functions in support of “Treaty-related activities,...” includes the following:
 - (1) Regulatory/Legal Department.
 - (2) Conservation officers.
 - (3) Environmental services.
 - (4) Judicial Services.

- (5) Tribal Council.
 - A. Executive Functions.
 - B. Legislative Functions.
 - (6) Natural Resources and Environmental Committee.
 - (7) Inter-Tribal Regulatory Bodies created at the direction of the Consent Decree (Chippewa Ottawa Resource Authority) or at the behest of intertribal initiatives.
- (c) Employees of the Tribe in the category denominated in this § 408 shall be eligible to make percentage allocation in support of the “fishing rights-related activities” test and follow the procedure outlined in § 409 requiring consultation with the GTB Human Resources Department for purposes of claiming the exemption under the provisions of 26 U.S.C. § 7873.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 409 - Procedures for Allocation and Verification

- (a) The GTB Human Resources Manager, in consultation with the GTB Natural Resources Department Manager, shall write a position description of all positions covered, directly or indirectly, by the reach of 26 U.S.C. § 7873 under the tests stated herein in §§ 407 and 408.
- (b) The employee covered by the reach of 26 U.S.C. § 7873 and §§ 407 and 408 of this chapter shall have the option of concurring with the language of the position description, for the sole purpose of the application of 26 U.S.C. § 7873, or registering a non-concurrence.
- (c) Each employee shall be required to file an employee allocation assertion made by the individual employee for those work duties covered by 26 U.S.C. § 7873 consistent with the Human Resources position description for his or her position.
- (d) If the employee voluntarily concurs with the position description, such concurrence shall be deemed consent to an explicit allocation to be made by the GTB Human Resources Department, in consultation with the GTB Natural Resources Department and the GTB Legal Department, on the percentage of time eligible for an exemption under 26 U.S.C. § 7873.
- (e) If the employee does not voluntarily concur with the position description and allocation made by the GTB Human Resources Department, then the GTB Accounting Department shall treat the position as subject to federal income taxation and federal withholding of FICA and FUTA. The GTB Accounting Department shall then issue tax forms consistent with IRS Notice 89-34 for the individual employee to file an independent claim of exemption under 26 U.S.C. § 7873.

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- (f) The GTB Human Resources Department shall verify the employee allocation solely for the purpose of compliance with the verification requirements of 26 U.S.C. § 7873(c)(1); as interpreted by the IRS in Internal Revenue Manual Handbook No. 4231 § 553(3)(d) (“Verification of time allocated. . . His employer should verify the percentage of time he engages in fishing rights-related activities of his tribe. The employer should also indicate that the employer is maintaining records to support the allocation.”)

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.

§ 410 - Records Maintenance

- (a) The GTB Accounting Department shall maintain records consistent with this chapter.

History: Tribal Act #06-24.1651, enacted by Tribal Council on April 26, 2006.