

TITLE 2 – RULES OF PROCEDURES

CHAPTER 2-1 ADMINISTRATIVE PROCEDURES

2-1-1 Definitions

- (a) "Adjudication" means the formulation of an order through a hearing before a Tribal department.
- (b) "Petitioner" means a person who files a Petition for Judicial Review under this Chapter 2-1.
- (c) "Decision Maker" means any appointed or elected person or Tribal department staff member empowered with specific authority to issue a Tribal department order under this Chapter 2-1.
- (d) "Tribal department" means a unit of Tribal staff members established to implement the goals and objectives of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians in a specific area and operating under the supervision and direction of Tribal Council. "Tribal department" includes a department, board, commission or other Tribal entity authorized or mandated by this Chapter 2-1 or by Tribal Council to hold hearings and issue orders.
- (e) "Ex Parte communication" means a communication between one party to a proceeding and the Decision Maker or Tribal department staff without notice to or participation by any other party to the proceeding.
- (f) "Order" means the whole or part of a final disposition of a Decision Maker, whether affirmative, negative, injunctive, or declaratory in form.

2-1-2 Procedural Rules/Policies

- (a) The Tribal Council may adopt procedural rules or policies such as deadlines, hearing procedures and commenting criteria to assist in implementation of the provisions of this Chapter 2-1. To the extent that either a Tribal department or Tribal Council through ordinance or resolution has enacted procedures for adjudications which specifically address hearing procedures and other such matters in a manner more detailed than that of this Chapter 2-1, those procedures control to the extent that such rules or policies do not conflict with the provisions of this Chapter 2-1.

(b) Computation of Time

Any time period specified in this Chapter 2-1 shall be computed as defined in Chapter 1-1, UTTCR 6.

ADJUDICATIONS

2-1-3 Timing

A Tribal department shall conduct an adjudication whenever the Tribal Code or Tribal Council requires that the Tribal department issue an order after opportunity for hearing on the record. Immediately thereafter, the Tribal department shall designate a Decision Maker to schedule a hearing and resolve the dispute. Except where provided in the Tribal Code or a policy adopted by Tribal Council or a Tribal department identifying a different period of time, a person must request a hearing on the record within thirty (30) days of the Tribal Council's or Tribal department's action giving rise to an opportunity for hearing on the record.

2-1-4 Exhaustion of Other Remedies

Before seeking a hearing before a Decision Maker, the party seeking a hearing must have exhausted all other available administrative remedies established by the Tribal Code or by the Tribal department through written policies.

2-1-5 Notice

Within fourteen (14) days after this Chapter 2-1 requires a hearing on the record before the Tribal department, the Decision Maker assigned to hear the dispute shall inform all persons known to have an interest in the hearing of:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority under which the hearing is to be held;
- (c) The matters of fact and law at issue;
- (d) The process for conducting the hearing, including a statement that the party seeking a hearing may be represented by counsel, a statement indicating whether discovery is available and, if so, how it will be conducted; and
- (e) A statement indicating whether and under what circumstances an order by default may be entered.

2-1-6 Appearance by Parties

A party may appear in person or by or with counsel in a Tribal department adjudicatory proceeding.

2-1-7 Submission of Evidence

Prior to the hearing, each party may submit such relevant evidence in support of their position as necessary to assist the Decision Maker in reaching his or her decision. Parties may also offer evidence at the hearing. Every party shall have the right of

cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

2-1-8 Hearings

(a) Each Tribal department may adopt its own hearing procedures provided that they conform with due process and applicable Tribal or federal law. To the extent that a Tribal department fails to adopt specific hearing procedures, or those procedures are in conflict with this Chapter 2-1, the procedures of this Chapter 2-1 shall apply.

(b) The Decision Maker presiding at the hearing may:

- (1) Administer oaths and affirmations;
- (2) Upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas authorized by law and when requested by a party;
- (3) Rule on offers of proof and admission of evidence;
- (4) Take depositions or have depositions taken when the ends of justice would be served;
- (5) Regulate the course of the hearing;
- (6) Hold conferences for the settlement or simplification of issues by consent of the parties;
- (7) Dispose of procedural requests or similar matters;
- (8) Directly question the parties to a hearing; and
- (9) Take other action consistent with this Chapter 2-1.

(c) Unless otherwise provided by Tribal law, the party seeking the hearing has the burden of proof.

(d) The parties may present any additional oral or documentary evidence, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. The parties may also submit rebuttal evidence, and conduct cross-examination where the Decision Maker determines such actions will produce evidence material to the resolution of the case.

(e) The Decision Maker shall issue a written opinion and order within thirty (30) days after the hearing. The order shall:

- (1) Be based solely on those issues properly raised to the Decision Maker and on all evidence submitted by the parties that is supported by substantial evidence;
 - (2) Be in writing and include the findings and conclusions of law of the Decision Maker and the reason or basis for such conclusions on all material issues of fact, law or discretion as presented by the parties, and the appropriate rule, order, sanction, relief, or denial thereof; and
 - (3) State the process by which a party may seek judicial review of the order.
- (f) The order of the Decision Maker shall be the final Tribal department decision.

2-1-9 The Record

- (a) The exclusive record for judicial review of a Tribal department order shall be compiled by the Decision Maker and shall include:
- (1) Complete audio or written recorded transcripts of testimony provided at the hearing;
 - (2) All evidence, pleadings, motions, intermediate rulings, and exhibits filed prior to and during the hearing;
 - (3) All stipulations;
 - (4) A statement of the substance of any ex parte communication and any rebuttal, as described in CLUSITC 2-1-10(c);
 - (5) Proposed findings by the Decision Maker; and
 - (6) The written order of the Decision Maker.
- (b) The record shall provide the basis for any subsequent Petition for Judicial Review of the Decision Maker's order in Tribal Court.
- (c) The record shall be provided to a party upon request and payment of costs by such party.

2-1-10 Ex Parte Contacts and Conflict of Interests

- (a) No interested person outside a Tribal department involved in an adjudication shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Decision Maker or person in such Tribal department who is or may reasonably be expected to be involved in the decision making process of the proceedings.

(b) No Decision Maker or person in the Tribal department who is or may reasonably be expected to be involved in the decision making process of the proceedings shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person outside the Tribal department.

(c) A Decision Maker or person in the Tribal department who is or may reasonably be expected to be involved in the decision making process of the proceedings who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall place on the record of the proceedings a statement of the substance of any ex parte communication on a fact in issue made to the Decision Maker during the pendency of the proceeding. The Decision Maker shall notify all parties of such communication and of their right to rebut the substance of the ex parte communications on the record.

(d) Upon a violation of this section by a party and absent good cause shown to the contrary, the Decision Maker may dismiss, deny, disregard or make other appropriate determinations in relation to such party's claim.

(e) Any Decision Maker who has an actual or potential personal, financial, or propriety interest in the outcome of a hearing must disclose such interests and, if unable to act in a non-biased manner, must recuse him or herself from the hearing.

(f) The prohibitions of this section also apply to any Tribal Council member who may sit as a Decision Maker.

2-1-11 Exclusion of Certain Employees from Decision

An employee or agent engaged in investigative or prosecuting functions for a Tribal department in a case may not, in that or a factually related case, participate or advise in the decision except as a witness or as legal counsel at the hearing unless the case involves the determination of an application for licenses.

JUDICIAL REVIEW

2-1-12 Petition for Judicial Review

(a) Unless otherwise precluded by Tribal law or policy, any party to a hearing may petition for Tribal Court review of a Tribal department order for which there is no other adequate remedy by filing a written Petition for Judicial Review with the Tribal Court within thirty (30) days after such final order is issued. A written Petition for Judicial Review must provide the Tribal Court with sufficient information and argument to show why the order should be changed or reversed. At a minimum, a Petition for Judicial Review must:

(1) State that the document is a Petition for Judicial Review;

- (2) List the name, address and telephone number of the petitioner;
- (3) Identify the order or portion of an order for which review is sought;
- (4) State the reason for review, including issues of fact, law, regulation, or policy;
- (5) Identify the authority for the Tribal Court to modify or set aside the order; and
- (6) Identify the specific substantive or procedural errors of law or fact in the order and the remedy sought.

(b) Within fourteen (14) days after the filing of a Petition for Judicial Review, the Decision Maker shall submit to the Tribal Court the record as described in CLUSITC 2-1-9. Should the Decision Maker fail to do so, the Tribal Court may order the Decision Maker to comply.

(c) The Tribal Court may grant or deny the Petition for Judicial Review. The failure to include any of the items described in CLUSITC 2-1-13(a) may be grounds for denying the Petition for Judicial Review. Should the Tribal Court grant the Petition for Judicial Review, the Tribal Court shall establish a briefing schedule and set a date for a hearing.

2-1-13 Record for Judicial Review

The record on judicial review shall provide the sole evidentiary record for the Tribal Court to review the order. The record on judicial review shall include:

- (a) The record as described in CLUSITC 2-1-9; and
- (b) All documents filed with the Tribal Court relating to the process of judicial review of the order and any additional information requested by the Tribal Court.

2-1-14 Scope and Standard of Review

(a) In reviewing the order, the Tribal Court shall decide only those issues raised in the Petition for Judicial Review and developed within the record, including all relevant questions of law and fact.

(b) The Tribal Court shall have exclusive jurisdiction to affirm, modify or set aside the order; issue prohibitory or mandatory injunctions; issue declaratory judgments; or remand the order to the Decision Maker for further proceedings.

(c) The Tribal Court shall review the order and hold unlawful and set aside any action, findings, and conclusions found to be:

- (1) Arbitrary, capricious and an abuse of discretion, unsupported by substantial evidence or otherwise not in accordance with Tribal or federal law;

- (2) Contrary to constitutional right, power, privilege or immunity;
- (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
- (4) Without observance of procedure required by law.

(d) The Tribal Court shall render a decision on a Petition for Judicial Review no later than thirty (30) days after the Petition for Judicial Review is filed and shall set a date and time for hearing on the Petition for Judicial Review within the thirty (30) day time limit. The decision of the Tribal Court shall be based solely on those issues properly raised to the Tribal Court in the Petition for Judicial Review and on the record on judicial review as a whole.

(e) The decision of the Tribal Court shall be final, subject only to review by the Tribal Court of Appeals.

2-1-15 Request for Stay

(a) Except for orders regarding disenrollment, which shall not be stayed pending judicial review, or where a project or activity would be implemented before judicial review could be completed, the Tribal Court may consider a written request to stay implementation of the order pending the outcome of judicial review. The party requesting the stay shall send a copy of the request to any other party to the proceeding. Such request must:

- (1) Provide a description of the specific project(s), activity(s), or action(s) to be stopped;
- (2) Include specific reasons why the stay should be granted in sufficient detail to permit the Tribal Court to evaluate and rule upon the stay request. The Tribal Court may stay implementation of an order upon a showing of:
 - (A) Irreparable injury to the petitioner; and
 - (B) A colorable claim of error in the order.

(b) Within fourteen (14) days of receipt of the request, the Tribal Court shall issue a written decision on a stay to the party requesting the stay and any other petitioners or intervenors involved in the judicial review proceeding. The decision shall state:

- (1) If the stay is granted, the specific activity(s) to be stopped, duration of the stay and reasons for granting the stay; or
- (2) If the stay is denied, in whole or in part, the reasons for the denial.

(c) Should the Tribal Court grant the stay, the Tribal Court may require the prevailing party to post a bond, the amount of which shall be established at the Tribal Court's discretion.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

ADMINISTRATIVE PROCEDURES

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Administrative Procedures Code by Ordinance No. 097A in a Tribal Council meeting on March 9, 2014. Vote was 6 (for), 0 (against), 1 (absent) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Administrative Procedures Code by Ordinance No. 097 in a Tribal Council meeting on October 24, 2012. Vote was 4 (for), 0 (against), 2 (absent) and 0 abstaining).

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