

**Title 19 – Environmental Protection**  
**Chapter 5 – Land Clearing**

**Sec.**

19-05.010	Title
19-05.020	Purpose and Scope
19-05.030	Jurisdiction
19-05.040	Authority
19-05.050	Findings
19-05.060	Definitions
19-05.070	Construction

***Subchapter I – Administration***

19-05.080	Permit
19-05.090	Fees
19-05.100	Application
19-05.110	Review

***Subchapter II – Requirements***

19-05.120	General
19-05.130	Erosion and Runoff Control
19-05.140	Clear-cut Limits
19-05.150	Conversion
19-05.160	Inspection
19-05.170	Enforcement Orders
19-05.180	Fines and Penalties
19-05.190	Statutory Damages

***Subchapter III – Appeals, Computation of Time and Law Applicable***

19-05.200	Request for Hearing Before the Planning Commission
19-05.210	Hearing by Planning Commission
19-05.220	Appeals of Planning Commission Decisions
19-05.230	Appeals of Senate Decisions
19-05.240	Time and Finality
19-05.250	Tribal Administrative Remedies and Tribal Court
19-05.260	Sovereign Immunity

***Subchapter IV – Repealer, Severability and Effective Date***

19-05.270	Repealer
19-05.280	Severability
19-05.290	Effective Date

## **Legislative History**

Enacted:

Land Clearing Code, Ord. 238 (08/02/05), BIA (08/18/05)

---

### **19-05.010 Title.**

This Chapter may be referred to as the “Land Clearing Code.”

[History] Ord. 238 (08/02/05).

### **19-05.020 Purpose and Scope.**

The purposes of this Chapter are:

- (A) To protect the environment within the exterior boundaries of the Swinomish Indian Reservation, including public and private property, from non-point pollution and other detrimental effects of land clearing, timber harvesting, road building, and other associated activities;
- (B) To ensure that the Tribe is notified of all land clearing activities conducted within the exterior boundaries of the Reservation before the land clearing activities commence;
- (C) To manage and guide the development and use of Swinomish Indian Reservation lands;
- (D) To protect the natural resources within the exterior boundaries of the Swinomish Indian Reservation; and
- (E) To protect against, and regulate, conduct that threatens or affects the political integrity, economic security, and health and welfare of the Swinomish Indian Tribal Community as a unique people and as a sovereign government.

[History] Ord. 238 (08/02/05).

### **19-05.030 Jurisdiction.**

Swinomish Indian Tribal Community jurisdiction over the activities subject to this Chapter shall extend to all lands and waters within the exterior boundaries of the Swinomish Indian Reservation to the maximum extent permitted by law.

[History] Ord. 238 (08/02/05).

**19-05.040 Authority.**

This Chapter is authorized by Article VI, Sections 1 (a), (c), (e), (h), (k), (l), (r) and (s), and Section 5(a) of the Constitution of the Swinomish Indian Tribal Community.

[History] Ord. 238 (08/02/05).

**19-04.050 Findings.**

The Swinomish Tribal Senate finds the following:

- (A) The Swinomish Indian Reservation was established pursuant to the Treaty of Point Elliot as a permanent homeland for the Indian Tribes and bands that now comprise the Swinomish Indian Tribal Community (Tribe). Treaty of Point Elliott, 12 Stat. 927, Article 2;
- (B) The Tribe's Federally approved Constitution and Bylaws provide that the Tribe's jurisdiction shall extend to the territory within the exterior boundaries of the Reservation as established by the Treaty of Point Elliot. Swinomish Indian Tribe Constitution Article I, Section 2;
- (C) Fishing and hunting, including shellfish harvest, are a central focus of the Tribe's culture and are of critical importance to the Tribe's economy and the economic well-being of its members, many of whom are dependent upon fishing, hunting and shellfish harvest for their livelihood, and for ceremonial and subsistence purposes;
- (D) Protection of fish and wildlife, their habitat and the lands upon which they depend are essential to the Tribe's goals of preserving and increasing fish and wildlife populations;
- (E) Tribal wildlife, fisheries and the natural resources upon which they depend are highly vulnerable to damage from adverse impacts to Reservation lands;
- (F) Development activities and land uses upon Reservation lands, including land clearing activities, have the potential to seriously impact Reservation natural resources including fisheries, wildlife, waters, wetlands, shorelines and other sensitive areas and natural resources;
- (G) The adverse impacts of land clearing include increased and uncontrolled volume of surface water runoff, decreased groundwater recharge, disruption or destruction of habitat, increased sediment and pollutants carried in surface water runoff, and increased emissions of air pollutants;
- (H) Future development will place increasing demands upon Reservation lands and natural resources. Protection and management of lands and natural resources through regulation of such development is of vital importance to the Tribe's economy and

political integrity, and to the health, welfare and economic well-being of its members and of the Reservation community; and

- (I) Continued protection and enhancement of the essential Indian character of the Reservation and Reservation community is of vital importance to the Tribe.

[History] Ord. 238 (08/02/05).

**19-05.060 Definitions.**

- (A) For the purposes of this Chapter, unless explicitly stated otherwise, the following words and phrases shall have the following definitions:
  - (1) **“Clearcut”** means a timber harvest method in which the entire stand of trees is removed in one harvesting operation.
  - (2) **“Conversion”** means conversion of forested lands to a use incompatible with growing timber.
  - (3) **“Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.
  - (4) **“Development”** means the construction, reconstruction, relocation or enlargement of any structure; mining, excavation, or landfill; or any use or extension of use of land that changes the existing conditions on the land.
  - (5) **“Director”** means the Director of the Office of Planning and Community Development or his or her designee.
  - (6) **“Forest Land”** means all land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner which is incompatible with timber growing.
  - (7) **“Impervious Surface”** means a hard surface area that has been compacted or covered with a layer of material so that it is more resistant to infiltration by water than under natural conditions prior to development or alteration. Impervious surfaces include, but are not limited to, roofs, concrete or asphalt paving, and compacted graveled areas.
  - (8) **“Land Clearing Activities”** means any human activity that removes the vegetative cover from an area of ground, including timber harvest.
  - (9) **“Planning Commission”** means the Planning Commission of the Swinomish Indian Tribal Community.

- (10) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
  - (11) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
  - (12) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus and Lower Skagit bands of Indians.
  - (13) **“Tribal Court”** means the Swinomish Tribal Court.
- (B) All other words and phrases shall have their ordinary and customary definitions.

[History] Ord. 238 (08/02/05).

**19-05.070 Construction.**

- (A) The terms and provisions of this Chapter shall be liberally construed to implement the purposes of this Chapter.
- (B) Except as otherwise provided by this chapter, this Chapter is to be construed consistent with the terms and provisions of other Chapters of the Swinomish Tribal Code, and applicable Tribal Plans and guidelines, including but not limited to the Swinomish Forest Management Plan.
- (C) In the event of a conflict between the terms and provisions of this Chapter and the terms and provisions of other Chapters of the Swinomish Tribal Code, the provision that better protects the lands and waters of the Reservation shall control.

[History] Ord. 238 (08/02/05).

*Subchapter I – Administration*

**19-05.080 Permit.**

- (A) **Required.** No person shall commence land clearing activities on any land within the exterior boundaries of the Reservation without first obtaining a permit from the Department.

(B) **Exceptions.**

- (1) Land clearing activities on less than one (1) acre shall be exempt from the requirements of Section 19-05.080(A) Provided that the land clearing activity does not present a danger or nuisance to adjacent private or public property.
- (2) The area of any parcel of land that is adjacent to the land to be cleared shall be counted towards the one-acre threshold if it has been cleared within the past five (5) years and is under the same ownership or management as the land to be cleared.
- (3) **Agricultural Lands.** The planting and harvesting of agricultural crops on lands that are in agricultural production as of the effective date of this Chapter shall be exempt from the terms and provisions of this Chapter.

(C) Permits shall be valid for two (2) years unless extended or renewed.

[History] Ord. 238 (08/02/05).

**19-05.090 Fees.**

- (A) All persons applying for a land-clearing permit shall pay a permit fee of not less than two hundred dollars (\$200.00) to the Department.
- (B) The Department shall publish the permit fee in the Office of Planning and Community Development Schedule of Fees, which shall be on file in the Department and made available for public inspection during regular business hours.
- (C) The Department may update the fee schedule, with Senate approval, from time-to-time.

[History] Ord. 238 (08/02/05).

**19-05.100 Application.**

- (A) The application for a permit shall contain the following:
  - (1) Name, address, and phone number of owner or the owner's agent;
  - (2) Address or parcel number of the property subject to the land clearing activity;
  - (3) Map identifying any shorelines or sensitive areas within two hundred feet (200') of the property subject to the land clearing activity;
  - (4) Description of the proposed land clearing activity; and

- (5) A map of the area to be cleared.
- (B) In addition to the requirements of Section 19-05.100(A), the Department may also require any or all of the following, if determined by the Department to be appropriate:
  - (1) Slash disposal plan;
  - (2) Revegetation Plan;
  - (3) Erosion and Runoff Control Plan; and/or
  - (4) Additional information reasonably necessary to ascertain the effects of the proposed land clearing activity on the environment and whether the proposed activities are in full compliance with Tribal law.

[History] Ord. 238 (08/02/05).

**19-05.110 Review.**

- (A) The Department shall review the application and may grant the permit, grant the permit subject to additional conditions, or deny the permit, within a reasonable period of time after a completed application has been filed with the Planning Department.
- (B) The permit, any additional conditions, or the denial of the permit, shall be in writing and shall be signed and dated by the Planning Director. If the permit is denied, the Director shall state the reasons for the denial.
- (C) Any person aggrieved by a decision of the Department pursuant to this Section may request a hearing on such decision by the Planning Commission in accordance with Section 19-05.200.

[History] Ord. 238 (08/02/05).

***Subchapter II – Requirements***

**19-05.120 General.**

- (A) All persons engaged in land clearing activities shall use Best Management Practices to:
  - (1) Minimize potential adverse effects on adjacent vegetation, wildlife habitat, and scenic resources.
  - (2) Protect groundwater and surface water quality; and
  - (3) Protect adjacent property from damage.

- (B) Natural or native vegetation shall be retained and protected to the maximum extent possible during any land clearing activity. Practices that retain and protect natural and native vegetation include:
- (1) Conducting slash disposal activities on the cleared ground, rather than on adjacent ground that has not been cleared;
  - (2) Parking vehicles on the cleared ground, rather than on adjacent ground that has not been cleared; and
  - (3) Clearing no more area than is necessary for to fulfill the purpose of the clearing activity.
- (C) Land clearing activities associated with timber harvest and management shall be conducted, to the extent feasible, in a manner consistent with the Swinomish Forest Management Plan except, buffers associated with shorelines and designated sensitive areas shall be as required in Title 19-04, The Shorelines and Sensitive Areas Code.

[History] Ord. 238 (08/02/05).

**19-05.130 Erosion and Runoff Control.**

- (A) **During Land-Clearing Activity.** If the Planning Department determines that erosion is probable during the land clearing activity, it shall impose a condition in the permit that areas with exposed soil be protected by the use of Best Management Practices.
- (B) **Steep Slopes.** Timber harvest shall be prohibited on slopes of thirty degrees (30°) or greater; provided that a small number of trees, not to exceed 1000 square feet in canopy area per residence, may be removed on such slopes when necessary to maintain a view from an existing home when slope stability can be preserved.
- (C) **Revegetation.**
- (1) All cleared areas not covered with gravel or other impervious surface shall be seeded or planted with native vegetative cover, as determined by the Department, as soon as practicable.
  - (2) Timber harvest areas, for which no conversion is planned, shall be replanted in appropriate native tree species in accordance with a plan approved by the Department.

[History] Ord. 238 (08/02/05).

**19-05.140 Clear-Cut Limits.**

- (A) A landowner shall not harvest by clearcut so that more than forty (40) contiguous acres of that landowner's forest land are in a clearcut condition;
- (B) For purposes of application of the limitation in subsection (A), forest land shall be considered to remain in the clearcut condition until it has reached canopy closure or it has been reforested for at least ten years, whichever occurs earliest;
- (C) Clearcut harvest units shall be considered by the Department to be contiguous unless separated by a buffer that is at least two hundred (200) feet wide and meets one of the following requirements:
  - (1) Has reached canopy closure;
  - (2) Has been reforested for at least ten years; or
  - (3) Is in a land use other than timber production.
- D) Any clearcut of more than twenty (20) contiguous acres shall require a review by the Tribal Wildlife Program.

[History] Ord. 238 (08/02/05).

**19-05.150 Conversion.**

- (A) Applicants proposing land clearing activities of one acre or more, which will result within three years in the conversion of forested lands to uses incompatible with timber growing, shall clearly state such an intent for conversion in the permit application.
- (B) Such conversion shall require a conversion plan approved by the Department and shall be consistent with Title 20, Land Use and Zoning, of the Swinomish Tribal Code and of the objectives of the Swinomish Forest Management Plan and the Swinomish Comprehensive Plan. A conversion plan shall include each of the following:
  - (1) The nature and extent of the conversion;
  - (2) Development or use activity proposed for the area to be converted; and
  - (3) Any reasonable and appropriate additional information requested by the Department.

- (C) Conversion without an approved Conversion Plan shall result in a six (6) year moratorium on development of converted land. The Department shall not process applications for building or subdivision permits on lands converted without approval.
- (D) An applicant may apply for a waiver or reduction of the moratorium. A waiver or reduction may be granted in the discretion of the Department provided that the applicant satisfies each of the following:
  - (1) The proposed development or use meets all other requirements of the Tribal Code; and
  - (2) The applicant pays a fine of \$100.00 per acre, or \$500.00, whichever is greater, and any related fines or statutory damages; and
  - (3) The waiver or reduction is approved by the Planning Commission following a public hearing held in accordance with Sections 19-05.200 through 19-05.260
  - (4) The applicant shall, at minimum, demonstrate to the Planning Commission:
    - (a) The waiver is necessary to avoid undue hardship on the applicant;
    - (b) The waiver would not adversely affect shorelines or sensitive areas.

[History] Ord. 238 (08/02/05).

**19-05.160 Inspection.**

- (A) For land clearing activities the Planning Department, upon notification from the permit holder or his or her agent, shall make or cause to be made any necessary inspections to the area subject to the land clearing activities to determine whether the land clearing activities are being conducted in compliance with the terms and provisions of this Code and shall notify the permit holder, or his or her agent, regarding such determination.
- (B) The permit holder or his or her agent is responsible for notifying the Department at least 24 hours in advance of a required inspection. The following are required inspections for land clearing activities:
  - (1) Upon installation of erosion control facilities or marking of the area to be cleared; and
  - (2) Upon completion of clearing activities.

[History] Ord. 238 (08/02/05).

**19-05.170 Enforcement Orders.**

- (A) In the event of any violation of any provision of this Chapter or any violation of a permit condition pursuant to this Chapter, the Director may issue an administrative order in writing stating the nature of the violation and requiring the landowner or other responsible party to:
  - (1) Take necessary action or corrective measures to clear the violation;
  - (2) Cease the activity causing the violation;
  - (3) Remediate, restore or mitigate for any adverse environmental effects of such activity or violation;
  - (4) Pay a civil fine or penalty pursuant to Section 19-05.180; and
  - (5) Pay statutory damages pursuant to Section 19-05.190.
- (B) Any administrative order issued by the Director pursuant to Section 19-05.170 may be appealed in accordance with Sections 19-05.200 to 19-05.260. Such order shall advise the violator of the right to request a hearing on the decision in accordance with Section 19-05.200.

[History] Ord. 238 (08/02/05).

**19-05.180 Fines and Penalties.**

- (A) Penalties for violations of this Chapter shall be as follows:
  - (1) The Department may impose fines of not less than two hundred dollars (\$200.00) and not more than five thousand (\$5,000.00) per violation per day;
  - (2) Each day may be considered a separate violation.
- (B) The fine shall be based on the following factors:
  - (1) Severity of the violation, including:
    - (a) Area illegally cleared, up to five times the minimum fine may be added;
    - (b) Steep slopes, up to double the minimum fine may be added;
    - (c) Potential impacts to water quality, aquatic or wildlife habitat and fisheries resources, up to five times the minimum fine may be added.

- (2) History of violations of this Chapter or any other chapter of the Swinomish Tribal Code related to the protection and management of the environment, natural resources and land-use for the same parcel or same violator;
  - (a) Second violation, double the minimum fine may be added;
  - (b) Third violation, triple the minimum fine may be added;
  - (c) Four or more violations; four times the minimum fine may be added.
- (3) Staff time required to correct the violation as per the fee schedule; and
- (4) Cooperation with the Department, which may allow reduction of the fine by up to 50% as calculated in subsections 19-05.180(B)(1-3). Factors considered under reduction include, but are not limited to, the following:
  - (a) Immediate compliance with order to cease an on-going violation.;
  - (b) Actions taken to correct the violation as quickly as feasible;
  - (c) Full cooperation with any Department investigations related to the violation;
  - (d) Violation was fully rectified within 30 days of notice.

[History] Ord. 238 (08/02/05).

**19-05.190 Statutory Damages.**

- (A) In addition to any other remedies for violations of this Chapter, the Department is authorized to assess and to recover, on behalf of the Tribe, statutory damages in the following amounts:
  - (1) Double the economic benefit the violator gained by non-compliance, as determined by the Department; or
  - (2) Double the amount of money the Tribe lost due to the person's violation of this Chapter, as determined by the Department; and/or
  - (3) Double the amount of money the Tribe expended or will expend in mitigating the environmental affects of the violation of this Chapter, as determined by the Department.

[History] Ord. 238 (08/02/05).

*Subchapter III – Appeals, Computation of Time and Law Applicable*

**19-05.200 Request for Hearing Before the Planning Commission.**

- (A) Any party aggrieved by a decision or action of the Planning Department for which this Chapter provides a right to request a hearing may request such a hearing by the Planning Commission within thirty (30) calendar days from the date of notice of the challenged decision or within thirty (30) calendar days from the date of the challenged action, as applicable.
- (B) Any request for a hearing shall be filed with the Planning Department and shall state:
  - (1) The reasons for the hearing request, specifically identifying any claimed errors involving any of the following in the challenged decision or action:
    - (a) Conclusions as to Swinomish law, plans or policies, as to Federal law, or in the application of such law, plans or policies;
    - (b) Any factual findings or statements of facts; or
    - (c) Any arbitrary or capricious action; and
  - (2) Any way in which the party requesting a hearing has been or will be substantially prejudiced by the challenged decision or action.

[History] Ord. 238 (08/02/05).

**19-05.210 Hearing by the Planning Commission.**

- (A) **Notice of Hearing.** The Planning Department shall publish a notice of any hearing conducted pursuant to this Chapter in a local newspaper of suitable size and general circulation. Such notice of public hearing shall be published so as to appear at least fifteen (15) days in advance of the date of the hearing. The hearing shall be held within sixty (60) calendar days of the date on which the request for the hearing was filed.
- (B) **Public Hearing Procedures.** Hearings conducted pursuant to this Chapter shall proceed in the following manner:
  - (1) The Planning Department shall provide copies of any application, supporting documents thereto, the challenged decision, permit, any additional conditions or order, and any documents in support thereof. Planning Commission members may ask questions of the staff.
  - (2) The party requesting the hearing may submit written documents or materials in response to the decision or action of the Planning Department. Planning Commission members may ask questions of the applicant.

- (3) Members of the public may offer comments for consideration by the Planning Commission. Questions or comments from the public shall be addressed to the Planning Commission and directed by the Chair of the Commission to staff or the applicant at the discretion of the Chair.
  - (4) Response or clarifying statements by the Department and the party requesting a hearing.
  - (5) Closing of the evidentiary portion of the hearing and deliberation on the proposal by the Planning Commission.
- (C) **Public Record.** The Planning Commission shall make a written or audio record of all hearings.
- (D) **Deliberation and Disposition.**
- (1) **Disposition.** The Planning Commission may affirm, modify or overturn the action or decision of the Department, and in its discretion the Commission may grant or deny a waiver or reduction of a moratorium imposed pursuant to Section 19-05.150. The Planning Commission shall issue its decision within thirty (30) days of the end of the public hearing.
  - (2) **Basis.** The Planning Commission shall review the evidentiary record of the hearing and shall base its decision upon such record, applying the provisions of the Swinomish Tribal Code and of Federal law.
  - (3) **Written Decision.** The Planning Commission shall issue its decision in writing. Copies shall be provided to the Planning Department and the applicant and shall be available for public inspection and copying at reproduction cost. The decision shall be issued within thirty (30) calendar days of the date of the hearing.
  - (4) **Appeal.** An aggrieved party may appeal the decision of the Planning Commission issued under this Subsection to the Senate in accordance with Sections 19-05.220 to 19-05.260.

[History] Ord. 238 (08/02/05).

**19-05.220 Appeals of Planning Commission Decisions.**

- (A) Any party aggrieved by a decision of the Planning Commission may appeal that decision to the Senate by filing a written notice of appeal within thirty (30) calendar days from the date of notice of the decision.

- (B) The Senate shall make a decision on appeal based on the administrative record of the proceedings before the Planning Commission. The Senate shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Planning Commission, and shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Planning Commission. The Senate shall issue a decision within sixty (60) days of the date on which the notice of appeal was filed.
- (C) The Senate shall affirm the decision of the Planning Commission unless the appealing party demonstrates to the Senate both (1) and (2) below:
  - (1) The decision of the Planning Commission is either:
    - (a) Contrary to Swinomish or Federal law; or
    - (b) Arbitrary or capricious; or
    - (c) Not supported by substantial evidence in the record of proceedings held before the Planning Commission; or
    - (d) Not in the best interests of the Tribe; and
  - (2) The appealing party has been or will be substantially prejudiced by the challenged action.
- (D) If the Senate determines that the aggrieved party has met the burden set forth in Subsection (C)(1) and (2), then the Senate, in its discretion, may issue a decision on the merits or may send the matter back to the Planning Commission for further proceedings in accordance with the Senate's decision.

[History] Ord. 238 (08/02/05).

**19-05.230 Appeals of Senate Decisions.**

- (A) Any party aggrieved by a decision of the Senate pursuant to this Chapter may appeal such decision to Tribal Court within thirty (30) calendar days from the date of notice of the decision. Any appeal to the Tribal Court shall be in writing and shall identify the name of the party petitioning for review, the interest of the petitioning party in the decision appealed from, and shall name as respondent only the Planning Director, in his or her official capacity.
- (B) The review by the Tribal Court shall be limited to the evidentiary record made in the administrative proceedings held before the Planning Commission. The Department may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Tribal Court and for the appealing party.

- (C) The Tribal Court shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Planning Commission. The Tribal Court shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Planning Commission and before the Senate.
- (D) The Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.
- (E) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (F) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the administrative proceedings held before the Planning Commission. The Court of Appeals shall not consider any issue that was not raised by the appealing party in both the administrative proceedings before the Planning Commission and the Senate and in the record of proceedings before the Tribal Court.
- (G) The Tribal Court and the Court of Appeals shall affirm the decision of the Senate upon review unless the appealing party demonstrates to the Court both (1) and (2) below:
  - (1) The decision of the Senate either:
    - (a) Is contrary to Swinomish or Federal law;
    - (b) Is arbitrary or capricious; or
    - (c) Is not supported by substantial evidence in the record of proceedings held before the Senate; and
  - (2) The appealing party has been or will be substantially prejudiced by the challenged action.
- (H) If the Court determines that the aggrieved party has met the burden set forth in Subsection (G)(1) and (2), then the Court shall reverse the decision appealed from and shall remand the matter to the Senate for further proceedings in accordance with the Court's ruling. The Senate, in its discretion, may send the matter to the Planning Commission for further proceedings in accordance with the Court's ruling. The Tribal Court and the Court of Appeals shall not have authority to issue a permit, impose a penalty or to grant an exemption, exception or a variance under this Chapter, and shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Senate for further proceedings.

- (I) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 238 (08/02/05).

**19-05.240 Time and Finality.**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.
- (B) All time periods set forth in Sections 19-05.200 to 19-05.260 shall be calculated in accordance with Rule 3-02.080(A), “Computation and Extension of Time”, of the Swinomish Rules of Civil Procedure.
- (C) If a decision of the Department, Planning Commission, Senate, or Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord. 238 (08/02/05).

**19-05.250 Tribal Administrative Remedies and Tribal Court.**

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Subchapter. An applicant or other aggrieved party must exhaust any and all administrative remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord. 238 (08/02/05).

**19-05.260 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Planning Commission, the Department, the Director, all tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 238 (08/02/05).

*Subchapter IV – Repealer, Severability, and Effective Date*

**19-05.270 Repealer.**

[Reserved]

[History] Ord. 238 (08/02/05).

**19-05.280 Severability.**

The terms and provisions of this Chapter are severable. If a court of competent jurisdiction should find any of the terms or provisions of this Chapter invalid, the validity of the remaining terms and provisions shall be unaffected, such that the remaining terms and provisions shall remain in full force and effect.

[History] Ord. 238 (08/02/05).

**19-05.290 Effective Date.**

This Chapter shall become effective immediately upon approval by the Secretary of the Interior and his or her designee.

[History] Ord. 238 (08/02/05).