

Title 20 – Land Use and Zoning
Chapter 4 – Subdivisions and Binding Site Plans

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Legislative History

Enacted:

Ordinance 384 Amending STC Title 20 Land Use and Zoning, Chapter 4 Subdivisions and Binding Site Plans (9/11/18).

Ordinance 257 Amending STC Title 20, Chapter 4, Subdivisions and Binding Site Plans, and Ordinance No. 226 (7/9/07), BIA (7/25/07).

Ordinance 226 Enacting Tribal Regulations for Land Divisions and Binding Site Plans Within the Swinomish Indian Reservation (4/5/05), BIA (4/20/05).

20-04.010 Title.

This Chapter may be referred to as the Subdivisions and Binding Site Plans Code.

[History] Ord. 226 (4/5/05).

20-04.020 Purpose.

The purpose of this Chapter is to:

- (A) Promote the health, safety, and welfare of the Swinomish Indian Tribal Community;
- (B) Further the purposes and objectives of the Comprehensive Plan, including the promotion of orderly growth and development, preservation of open space, and protection of environmentally sensitive areas;
- (C) Provide uniform standards, controls, procedures, and regulations for the division of land into lots; and
- (D) 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 a sovereign government by protecting the lands of the Swinomish Indian Reservation.

[History] Ord. 226 (4/5/05).

20-04.030 Authority.

This Chapter is adopted pursuant to the following provisions of the Constitution of the Swinomish Indian Tribal Community, as most recently amended:

Art. VI, Sec. 1(a), 1(c), 1(h), 1(k), 1(l), 1(r), and 1(s)
Art. VI, Sec. 5(a)

[History] Ord. 226 (4/5/05).

20-04.040 Jurisdiction.

Swinomish Indian Tribal Community jurisdiction over land use, zoning, subdivision, and development activity shall extend to all the lands and waters within the exterior boundaries of the Swinomish Indian Reservation to the maximum extent permitted by law.

[History] Ord. 226 (4/5/05).

20-04.050 Construction.

- (A) This Chapter shall be construed to implement the requirements of this Chapter and the goals and objectives of the Swinomish Comprehensive Plan.
- (B) In the event of a conflict between a Section of this Chapter and a Section of any other Chapter of this Code, the Section that the Planning Director determines better promotes the purposes of this Chapter shall apply.

[History] Ord. 226 (4/5/05).

20-04.060 Definitions.

- (A) Unless explicitly stated otherwise, for terms that are not defined in Subsection (B) the definitions in Chapter 20-03 – Zoning shall also apply to this Chapter.
- (B) Unless explicitly stated otherwise, the following words and phrases, as they are used in this Chapter, shall have the following meanings:
 - (1) **“Applicant”** means any person applying for any of the permits required by this Chapter.
 - (2) **“BIA”** means the Bureau of Indian Affairs of the United States Department of Interior.

- (3) **“Buffer”** means open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another use or property so as to shield or block noise, lights, or other nuisances.
- (4) **“Commission” or “Planning Commission”** means the Planning Commission of the Swinomish Indian Tribal Community.
- (5) **“Common Ownership”** of a condominium means those areas and facilities identified in the binding site plan in which each owner has an undivided interest in common with all the other owners. Common areas and facilities include:
 - (a) Recreational areas and facilities, including but not limited to gardens, landscaping, playgrounds, lawns, ball courts, and swimming pools,
 - (b) Communal areas and facilities, including but not limited to game rooms, laundry rooms, exercise rooms and parking areas, and
 - (c) Natural areas, including, but not limited to, wetlands, water bodies, meadows, and woodlots.
- (6) **“Comprehensive Plan”** means the comprehensive plan of the Swinomish Indian Tribal Community.
- (7) **“Condominium”** means a form of ownership of real property where an individual owner has separate ownership of his or her dwelling unit and common ownership of common areas and facilities.
- (8) **“County”** means Skagit County, Washington.
- (9) **“Dedication”** means the deliberate appropriation of land by an owner for any public use, where the owner reserves no other rights than those that are compatible with the full exercise and enjoyment of the public use to which the property has been dedicated.
- (10) **“Developer”** means the person or persons with a legal interest in a lot proposing to subdivide or develop the lot under the terms of this Chapter.
- (11) **“Director”** means the Director of the Office of Planning and Community Development.
- (12) **“Easement”** means an interest in land owned by another person, consisting in the right to use the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). An easement does not give the holder the right to possess, take from, improve, or convey the land.

- (13) “**Final Plat**” means the plat, map, or drawing of a subdivision as approved by the Senate or the Planning Commission pursuant to the terms and conditions of this Chapter.
- (14) “**Frontage**” means the area of a lot adjacent to and bordering an area that is under different ownership or use, such as another lot, a street or right of way, a building, or a natural feature such as a wetland, stream, or beach.
- (15) “**Gift Deed**” means a donation or transfer of real property for a nominal sum or for a non-monetary consideration, such as love and affection.
- (16) “**Gross Acreage of a Proposed Land Division**” means all the land area within the proposed boundaries of the land division, including that area between the proposed lot lines and the centerline of any existing public road or street adjacent to the land division.
- (17) “**Long Plat Subdivision**” means all subdivisions of land that include either:
 - (a) Five (5) or more lots; or
 - (b) A new street or a new or extension of local government facilities or public improvements.
- (18) “**Lot Area**” means the total land area within the boundary lines of a lot.
- (19) “**Lot Line Adjustment**” means the procedure by which an owner of a lot, or someone with an interest in the lot, may make minor changes in the boundary lines of a lot.
- (20) “**Minimum Size of Proposed Lot**” means a lot that has the least amount of square footage allowed by a local zoning law.
- (21) “**Monumentation**” means the process of fixing survey markers or other such markers on the ground to mark and identify the boundaries of a lot.
- (22) “**Open Space**” means any land area where development is either strictly controlled or prohibited altogether.
- (23) “**OSMP**” means open space management plan.
- (24) “**Panhandled Lot**” means a lot with an irregular shape, including a portion drawn for the purpose of providing access to a road.

- (25) **“Partition”** means the process whereby an individual tribal member’s undivided interest in a lot is transferred from the entire allotment to a particular portion of the lot and the undivided interest of every other tribal member is removed from the portion of the lot that has been partitioned.
- (26) **“Performance Bond”** means a bond given by a surety to ensure the timely performance of a contract or to ensure compliance with the terms of this Chapter.
- (27) **“Person”** means any individual, firm, corporation, partnership, or other entity, tribal or non-tribal.
- (28) **“Phased Subdivision”** means any subdivision consisting of at least five (5) lots where the developer intends to develop the subdivision in stages and to submit the final plat for each individual phase, rather than all at once.
- (29) **“Planning Department”** or **“Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.
- (30) **“Plat”** means a map of a subdivision showing the division of the tract of land into lots, blocks, streets, roads, alleys, or other divisions and dedications.
- (31) **“Realty Office”** means the Realty Office of the Swinomish Indian Tribal Community.
- (32) **“Redivision”** means any new subdivision within an existing subdivision.
- (33) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (34) **“Reservation Community”** means all persons who live within the exterior boundaries of the Reservation.
- (35) **“Road”** means an improved and maintained lawful public or private right of way that provides vehicular access to abutting properties.
- (36) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (37) **“Sensitive Areas”** means any of the following designated areas or ecosystems: wetlands sensitive areas, fish and wildlife sensitive areas and geological hazard sensitive areas.
- (38) **“Separate Ownership”** of a condominium means those areas identified in the binding site plan where each owner has exclusive ownership, subject to the covenants and bylaws of the condominium association. Separate areas include but are not limited to private dwelling units.

- (39) “**Short Plat Subdivision**” means the division of land into four (4) or fewer lots.
- (40) “**Site Plan**” means a scaled drawing that shows the location of buildings, roads, utilities, opens spaces, improvements, rights-of-way, easements, dedications, and other principal development features.
- (41) “**State**” means the State of Washington.
- (42) “**Subdivision**” (Verb): means the division or re-division of land into lots. (Noun): means the set of lots created by the division or re-division.
- (43) “**Swinomish**” means the Swinomish Indian Tribal Community.
- (44) “**TEPA**” means the Swinomish Tribal Environmental Policy Act, codified as Chapter 19-01 of the Swinomish Tribal Code.
- (45) “**Tribal Engineer**” means a licensed, bonded, or otherwise qualified engineer employed by or under contract to the Tribe.
- (46) “**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.
- (47) “**Trust Land**” means any land where the title to that land is: (a) held by the United States in trust for an individual tribal member, the Tribe, and/or any Indian, or (b) held by an individual tribal member, the Tribe, and/or any Indian subject to a restriction by the United States against alienation.
- (48) “**Vicinity Sketch**” means a drawing or visual representation of the area within one-half mile of the boundaries of a given parcel of land.
- (49) “**Zoning Map**” means the Official Zoning Map of the Swinomish Indian Reservation, identified by Section 20-03.200.

(C) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 226 (4/5/05).

Subchapter I – Administration

20-04.070 Permits.

- (A) No person shall subdivide a parcel of land without first obtaining a permit from the Planning Department pursuant to the provisions of this Chapter.

- (B) No building permit for construction of individual structures within a proposed subdivision shall be approved by the Planning Department until a final plat has been recorded pursuant to Section 20-04.290 and 20-04.630, Provided that other Tribal permits as required for site preparation and/or installation of utilities within a subdivision may be approved by the Planning Department subsequent to approval of a subdivision application by the Planning Commission.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

20-04.080 Permit Fees.

- (A) **Filing Fee.** All persons who apply for any of the permits required by this Chapter shall pay the requisite fees published in the Uniform Fee Schedule on file with the Planning Department.
- (B) **Additional Fees.** The Planning Department shall charge applicants any additional fees required to process the application based on the time and resources required. These additional fees are intended to cover costs of processing that may not be covered by the permit fee or the cost of consultant services. The fees shall be consistent with the Uniform Fee Schedule published by the Tribe and on file with the Planning Department.
- (C) The Planning Department may propose to the Senate appropriate changes in the Uniform Fee Schedule from time to time.

[History] Ord. 226 (4/5/05).

20-04.090 Site Inspection.

- (A) The Planning Department may enter any land or parcel, including fee land and trust land, within the exterior boundaries of the Reservation to inspect the property to determine whether the land is being used in conformance with the provisions of this Chapter.
- (B) Before entering the land, the Planning Department shall make reasonable effort to locate the owner and notify him or her of the pending inspection.
- (C) The Planning Department shall carry out the inspections authorized by this Chapter at reasonable times in a reasonable manner.

[History] Ord. 226 (4/5/05).

20-04.100 Enforcement.

- (A) **Withholding of Permits.** The Planning Department may withhold any other permit for which the developer may apply until the developer comes into compliance with this Chapter and any permits previously issued pursuant to this Chapter.

- (B) **Stop Work Order.** The Planning Department may issue a stop work order to enforce the conditions of the permit.
- (C) **Equitable Relief.** The Tribe shall take any action authorized by law or in equity to ensure compliance with or to prevent violation of this Chapter or regulations issued hereunder.

[History] Ord. 226 (4/5/05).

20-04.110 Penalties and Hearings.

- (A) Each violation of this Chapter shall be a civil violation subject to the following penalties:
 - (1) A civil fine for up to triple the fee for the permit that the applicant is violating;
 - (2) Enforcement costs;
 - (3) Court costs; and
 - (4) Costs of clean up and remediation, if any.
- (B) Each day the applicant fails to remedy the violation shall constitute a separate violation.
- (C) The Planning Department shall give written notice to the violator of any penalty imposed pursuant to this Section.
- (D) Any party aggrieved by a decision or action of the Planning Department taken pursuant to Sections 20-04.100 or 20-04.110 may request a hearing by the Planning Commission on such decision or action in accordance with Sections 20-04.570 to 20-04.620.

[History] Ord. 226 (4/5/05).

Subchapter II – Trust Land

20-04.120 Trust Land.

- (A) **Tribal Law.** All divisions or partitions of trust land shall comply with this Chapter.
- (B) **Realty Office.**
 - (1) All divisions or partitions of trust land shall be completed by the Realty Office pursuant to the requirements of 25 CFR 152.1 and 25 CFR 152.33.
 - (2) The Realty Office shall not approve a land division or partition that creates a lot that does not comply with the provisions of this Chapter and applicable federal law.

(C) **Planning Department.**

- (1) Before initiating the process to divide or partition trust land, the Realty Office shall inform the Planning Department of the application and deliver to the Planning Department the application including a written description of the size and location of the lot the applicant wishes to divide or partition.
- (2) Upon receipt of the application, the Planning Department shall make a preliminary determination of whether the proposed land division or partition would be consistent with this Chapter and applicable Federal law.

[History] Ord. 226 (4/5/05).

Subchapter III – Plans and Documents

20-04.130 Plats.

- (A) All subdivision plats shall be prepared and certified by an engineer and/or land surveyor who shall be licensed, bonded, and otherwise qualified by the State of Washington.
- (B) The plat and accompanying text shall contain the following information:
 - (1) The name and address of all owners of record, the developer, the engineer and/or land surveyor;
 - (2) The legal description of the lot boundaries of the subdivision;
 - (3) The location of section subdivisions showing the boundary of the plat in relation to the section, with notations of Section, Township, and Range;
 - (4) A vicinity sketch at a minimum scale of two inches (2') = one mile (1 mi);
 - (5) Total acreage of the property to be platted and adjacent tracts if under the same ownership;
 - (6) Acreage of the lands to be developed in individual phases, if applicable;
 - (7) The date, scale (noted in written and graphic form), and a north arrow. The appropriate scale shall be determined by the size of the project;
 - (8) The location of municipal boundaries, township lines, and section lines;

- (9) The location, width and names of all roads, both pre-existing and proposed; provided that:
- (a) Proposed roads shall be identified as such.
 - (b) In the event any substandard road is required to be upgraded, the land needed for the upgrade shall be identified as a right-of-way.
 - (c) When a private road on trust land is included in the subdivision the following note shall be included on the final plat:

In no case shall the Tribe accept a dedication of any road, street, or alley until the same has been brought into full compliance with BIA Road Standards in effect on the date of the plat and a right-of-way deed has been transferred to and accepted by the Tribe and the BIA.
- (10) The layout of existing and proposed utility easements;
- (11) The number, dimensions, square footage, and acreage of all proposed and existing lots and tracts. Lots and tracts shall be sequentially numbered or lettered;
- (12) The location of the front, rear and side setback lines of all buildings with the distance from the property line indicated in feet;
- (13) The location of all protected buffer areas and overlay districts;
- (14) Location of existing and proposed wells, in any;
- (15) Ground contours with intervals of five feet (5') or less;
- (16) A description of all easements, covenants, liens, or other encumbrances on the property; and
- (17) Any other notes or certifications required by the Planning Department to ensure compliance with the terms of this Chapter.
- (C) The plat shall be accompanied by a certificate signed by a licensed land surveyor certifying that the boundaries of the land have been surveyed and monumented and that all distances and compass bearings on the preliminary plat are accurate and bear the official seal of the land surveyor.

[History] Ord. 226 (4/5/05).

20-04.140 Engineering Plans.

After reviewing any reports submitted pursuant to Section 20-04.220, the Planning Department may require the developer to submit a plan prepared by an engineer licensed, bonded, or otherwise qualified under the laws of the State of Washington that addresses issues pertinent to the topography, soils, environment, archeological or cultural resources, waters, or other physical characteristics of the proposed subdivision which were identified in the reports.

[History] Ord. 226 (4/5/05).

20-04.150 Phased Development.

- (A) A developer who seeks to develop a subdivision in phases or stages shall prepare a phasing plan identifying beginning and completion timeframes for each phase of the proposed subdivision. Site improvements designed to relate to, benefit, or be used by the entire subdivision (such as a storm-water detention pond) shall be noted in the phasing plan. The phasing plan shall be submitted to the Planning Department at the time the application for the subdivision is submitted.
- (B) The phasing plan shall tie completion of any mitigation required under Sections 20-04.220 and/or 230 to completion of one or more phases or stages of the subdivision. Upon approval of the subdivision application by the Planning Commission or Senate, all information contained in the phasing plan shall be shown on, or the phasing plan shall be attached to and made a part of, the final plat.
- (C) **Contingent Approval.** Approval of any permit in a phased development may be withheld by the Planning Commission or Senate until the Tribal Engineer certifies that the developer has completed all mitigation measures required by Section 20-04.230(A) in accordance with all permits, plans, specifications.
- (D) Applicants for phased tribal projects where the Tribe acts as its own developer or through a properly designated representative may submit application materials in stages, as specified by the Planning Department with the approval of the Planning Commission and in compliance with STC Title 19, Chapter 1. This subsection only applies to projects located on reservation tribal trust land or land owned in fee by the Tribe in the process of being converted into trust.

[History] Ord. 384 (9/11/18); Ord. 226 (4/5/05).

Subchapter IV – Application Review and Approval

20-04.160 Pre-Application Conference.

- (A) **Purpose.** The purpose of the pre-application conference is to expedite the application process, reduce subdivision and site plan design and development costs, and ensure compliance with this Chapter.
- (B) **Long Plat.** The Planning Department shall require all developers seeking a long plat subdivision permit to schedule and attend a pre-application conference with the Planning Department.
- (C) **Short Plat.** The Planning Department may require any developer who seeks a short plat subdivision permit to schedule and attend a pre-application conference with the Planning Department.

[History] Ord. 226 (4/5/05).

20-04.170 Application For Subdivision Permit.

- (A) All persons applying for a permit to subdivide real property within the exterior boundaries of the Reservation shall file an application form with the Planning Department.
- (B) **Long Plat Subdivision.** An application for a long plat subdivision permit shall include the following:
 - (1) The application form for a long plat subdivision;
 - (2) The permit fee as set forth in the Uniform Fee Schedule;
 - (3) A plat conforming to Section 20-04.130 of this Chapter;
 - (4) A title report issued within ninety (90) days of the application identifying all persons having an ownership interest in the land, all encumbrances, and a legal description of the land proposed to be included within the subdivision;
 - (5) All documents and materials, if any, required by Sections 20-04.130 through 20-04.150, above;
 - (6) A completed environmental checklist, as required by Chapter 19-01 – Tribal Environmental Policy Act;
 - (7) All documents and materials demonstrating compliance with Title 13 – Real Property and Housing, and this Chapter;

- (8) All proposed articles of incorporation, bylaws, covenants, conditions and restrictions of the subdivision, if any;
 - (9) All proposed use restrictions, if any;
 - (10) Proof of lawful access (access permit or easement) from the owner of property that will provide lawful access to the subdivision, if the owner is not the applicant;
 - (11) For the purpose of determining compliance with Section 20-04.410 of this Chapter, letter from the applicable purveyor of water service, if any, verifying availability of service to the proposed subdivision, or proposal for water service if no existing water service is available;
 - (12) For the purpose of determining compliance with Section 20-04.420 of this Chapter, letter from the applicable purveyor of sewer service, if any, verifying availability of service to the proposed subdivision, or method of sewage disposal if no existing sewage disposal system is available;
 - (13) A grading plan showing areas of proposed clearing and areas of proposed vegetation retention pursuant to Chapter 20-03 – Zoning, said grading plan to include a topographical map using five-foot (5') contour lines;
 - (14) A drainage control plan in conformance with Chapter 12-05 – Stormwater Management; and
 - (15) A list of all property owners within 300 feet of proposed project.
- (C) **Short Subdivision.** An application for a preliminary short plat subdivision shall include all of the documents and materials required in Section 20-04.170(B) above, Provided that the Planning Department, in its sole discretion, may waive any of the requirements for a short plat subdivision if the Department determines that:
- (1) The requirement(s) being waived would be unreasonably burdensome and vexatious on the applicant; and
 - (2) Waiver of the requirement(s) would be in the best interest of the Tribe.

[History] Ord. 226 (4/5/05).

20-04.180 Determination of Completed Application.

- (A) The Planning Department shall determine whether the application is complete within five (5) working days of the date the application is submitted.
- (B) If the application is complete, the Planning Department shall accept the permit fee, date stamp the application form, and forward the application for technical review by the Department and/or its consultants.
- (C) If the application is incomplete, the Planning Department shall return it to the applicant with a checklist identifying the missing elements.
- (D) If the Planning Department fails to make such a determination of completeness within five (5) working days of the date the application is submitted, the application shall be deemed to be complete.
- (E) A determination that an application is complete does not constitute a determination that the application is in compliance with all provisions of this Chapter.
- (F) Ordinances and Regulations Applicable to Completed Application:
 - (1) An application for permit(s) for the development and use of property pursuant to this Chapter shall be considered under the provisions, terms, and conditions of Tribal ordinances and regulations that are in effect on the date that such application is accepted by the Planning Department as complete pursuant to Section 20-04.180.
 - (2) The consideration of an application under such provisions, terms, and conditions of Tribal ordinances and regulations that are in effect at the time such application is accepted by the Planning Department, as provided in Section 20-04.180(F)(1), shall be only for a limited period ending with the earlier of either:
 - (a) Expiration of the application;
 - (b) Expiration of a permit issued pursuant to such application; or
 - (c) Five (5) years from the date that the application is accepted as complete.
 - (3) The provisions of Section 20-04.180(F)(1) shall apply only to the scope of the project for which the permit application is made.
 - (4) Notwithstanding the provisions of Section 20-04.180(F)(1), consideration of an application pursuant to Section 20-04.180(F)(1) may be voided in favor of reconsideration under the provisions, terms, and conditions of Tribal ordinances and regulations that are in effect at the time of such reconsideration upon a determination by the Planning Director that, as a result of changed conditions, such action is necessary to protect public health or safety.

- (5) No entitlement, rights or claim of right, other than that specifically set forth in Subparagraph (F)(1), shall be created in an applicant or application by virtue of the submission of an application or the acceptance of an application as complete. This Subsection (F) does not provide any entitlement to approval of an application, and does not constitute a waiver of any provision of this Chapter or any other applicable provisions of law.

[History] Ord. 226 (4/5/05).

20.04.190 Public Notice.

- (A) Within fourteen (14) days of accepting a complete application for a long plat subdivision, the Planning Department shall publish a public notice of application for proposed long plat subdivision within the Reservation. Such notice shall be published in a local newspaper of suitable size and general circulation, shall be mailed to all property owners and occupants within 300 feet of the proposed subdivision, and shall also be mailed to all affected jurisdictions.
- (B) Public notice of application for proposed long plat subdivision shall include but not be limited to the following information:
 - (1) Name of applicant;
 - (2) Date of application;
 - (3) Date the application was determined to be complete;
 - (4) Location of the proposed long plat subdivision;
 - (5) A project description;
 - (6) Identification of any other required permits;
 - (7) Duration of public comment period;
 - (8) Preliminary identification of applicable regulations and documents that will be used to review the application;
 - (9) Statement as to whether and how a public hearing will be scheduled;
 - (10) Department contact and phone number.

[History] Ord. 226 (4/5/05).

20-04.200 Public Comments.

- (A) **Public Comment Period.** The Planning Department shall accept written comments from members of the public on a proposed long plat subdivision for twenty (20) days after the date of publication of a notice of application.

- (B) **Public Inspection.** The Planning Department shall make application documents and written comments available for public inspection. Copies of all documents submitted by an applicant pursuant to this Chapter shall be on file in the Office of Planning and Community Development where they shall be available for public review and copying at reproduction cost during regular business hours.
- (C) **Applicant Response.** Upon request, copies of public comments received by the Planning Department shall be provided to the applicant at no cost. The applicant may discuss his or her response to the public comments with the Planning Department, and may submit to the Planning Commission a written response prior to or at the time of review by the Planning Commission.

[History] Ord. 226 (4/5/05).

20-04.210 Technical Review.

- (A) **Review Period.** The Planning Department and/or its consultants shall complete a technical review of a subdivision application within thirty (30) days of acceptance of a complete application, Provided that the Director, or his or her designee, may authorize an additional thirty (30) days for review where the Director determines that circumstances warrant such an extension of time. Should review not be completed within the initial extension of time, the Director, or his or her designee, shall review the application and determine whether or not additional extension of time is warranted and whether a determination of compliance or non-compliance should be made pursuant to Section 20-04.210(B) below. Upon an extension of the review period by the Director, the Planning Department shall notify the applicant of the extension and the status of application review.
- (B) **Written Determination.** Upon completion of technical review, the Planning Department shall determine whether the completed application is in full compliance with all the provisions of this Chapter. The determination shall be provided in writing as a recommendation to the Planning Commission and a copy provided to the applicant.
 - (1) **Compliance.** If the Planning Department determines that the application complies with the provisions of this Chapter, the Director, or his or her designee, shall sign and date the application form and indicate the application is in compliance with the terms of this Chapter. The Director, or his or her designee, shall initiate review of the application by the Planning Commission, as required by Section 20-04.250.
 - (2) **Non-compliance.** If the Planning Department determines that the application is not in compliance with the requirements of this Chapter, the applicant may engage the Planning Department in an iterative process to attempt to bring the application into full compliance. Upon completion of the iterative process, the Director, or his or her designee, shall issue a second written determination which shall determine anew if the application is in compliance with the terms of this Chapter. Upon resolving the non-compliance, the Director shall initiate review of the application by the Planning Commission as required by Section 20-04.250. The Planning

Department may charge the applicant additional fees for processing the application pursuant to Section 20-04.080(C). If the applicant declines the opportunity for iterative processor fails to respond to a determination of non-compliance, the Planning Department shall deny the application.

- (3) An applicant whose application is denied by the Planning Department may request a hearing by the Planning Commission in accordance with Sections 20-04.570 to 20-04.620.

[History] Ord. 226 (4/5/05).

20-04.220 On-Site Mitigation.

- (A) **Mitigation Measures.** Pursuant to a Technical Review of the application, the Planning Department shall determine what measures the developer shall be required to take to mitigate the impact of the proposed subdivision on resources, facilities, the environment, and services. Mitigation acceptable to the Department is required for approval of a subdivision application under this Chapter. Such mitigation may include any or all of the following measures:
 - (1) Dedicate a portion of his or her property for a public right of way, utility easement, or similar dedication within or along the boundaries of any proposed subdivision;
 - (2) Establish or preserve open space, wildlife habitat, recreational facilities, parks, or similar areas or facilities;
 - (3) Build or improve roads, sidewalks, sewers, water lines, and other improvements; and/or
 - (4) Develop any other mitigation measures deemed necessary or appropriate under this Chapter or under other applicable Chapters or provisions of the Swinomish Tribal Code.
- (B) **Rough Proportionality.** Any required mitigation and the cost to the developer of such mitigation shall be roughly proportional to the effect on the Reservation resources, facilities, environment and services, and on the Reservation Community of the proposed development so that the mitigation bears a reasonable relationship to the anticipated impacts of the proposed development.
- (C) **Reasoned Analysis.**
 - (1) Before the Planning Department requires mitigation, the developer shall conduct a reasoned analysis of the impacts of the proposed development and different alternatives for mitigating those impacts; Provided, however, that the Department at its discretion may conduct an independent reasoned analysis in addition to, or in lieu of, such an analysis by the developer.

- (2) The reasoned analysis shall be consistent with the requirements of this Chapter, and shall include, but not be limited to, consideration of the impacts of the proposed subdivision on the following:
 - (a) Traffic and roads;
 - (b) Public or private sewer and water services;
 - (c) Other private or public utilities;
 - (d) Fire and police protection;
 - (e) Stormwater and drainage facilities;
 - (f) Schools, parks, and similar areas and facilities;
 - (g) Access to public transportation;
 - (h) Open space, wildlife and sensitive areas;
 - (i) The overall quality of life on the Reservation; and
 - (j) All other reasonably foreseeable impacts from the proposed subdivision.

- (D) **Reports.** As a component of, or supplement to, the reasoned analysis the developer shall submit one or more technical reports that address potential impacts and alternatives for mitigation of potential impacts that are identified by the Planning Department. Any and all reports submitted must be prepared and certified by a licensed, bonded, or otherwise qualified technical expert or engineer of the given profession. Required reports may include, but not be limited to, the following:
 - (1) Traffic impact analysis;
 - (2) Archeological/cultural resources report;
 - (3) Geotechnical (soils) report;
 - (4) Biological assessment;
 - (5) Hydrogeological report, if a private well is proposed to serve the subdivision or if the proposed subdivision will be located within a wellhead protection area.

[History] Ord. 226 (4/5/05).

20-04.230 Off-Site Mitigation.

(A) **Mitigation or Impact Fees.** After a reasoned analysis has been conducted pursuant to Section 20-04.220(C), the Planning Department may require a developer as a condition of his or her permit to:

- (1) Provide off-site mitigation determined by the Department to be necessary to mitigate the impact of the proposed development; or
- (2) Pay as an impact fee a proportionate share of the costs of any off-site mitigation determined by the Department to be necessary to mitigate the impact of the proposed development.

Off-site mitigation may include, but is not limited to, transportation improvements; extension of public sewer and water services; storm drainage facilities; parks, recreation facilities and trails; schools; and facilities for public health and emergency services.

(B) **Rough proportionality.** Construction of off-site developer improvements or the costs for such off-site improvements as covered by required impact fees shall be allocated as follows:

- (1) **Full Allocation.** If a developer is required to mitigate the impacts of the proposed subdivision, and if the off-site improvements will only benefit the proposed subdivision and not any other proposed or existing subdivision, the developer shall bear full responsibility for construction of off-site improvements and/or pay as an impact fee the entire cost of the off-site improvements, as required.
- (2) **Proportionate Allocation.** If a developer is required to mitigate the impacts of the proposed subdivision, and if the off-site improvements will benefit both the proposed subdivision and other proposed or existing subdivisions, the developer shall bear proportionate responsibility for construction of off-site improvements and/or pay as an impact fee the proportionate costs, as required.

[History] Ord. 226 (4/5/05).

20-04.240 Performance Guarantees.

(A) **Warrant.** The developer shall warrant that he or she shall:

- (1) Complete all mitigation required by Section 20-04.220 within a reasonable period of time consistent with the approved final plans and construction drawings of the proposed subdivision;
- (2) Maintain any improvements to be transferred to the Tribe until they are accepted by the Tribe; and

- (3) Ensure that pre-existing property and developments thereon are not damaged by any construction or development activity related to the proposed subdivision, and shall guarantee repair of any damages or abatement of any nuisances created as a result of any construction or development activity related to the proposed subdivision, including but not limited to the cleaning and repairing of streets and sidewalks, storm sewers, catch basins, landscaping, and utility infrastructure.

(B) **Methods of Guarantee.**

- (1) **Performance Bond.** The Planning Department may require a developer to post a performance bond to ensure that the developer timely complies with the conditions of his or her permit and the requirements of Section 20-04.240(A), and which may be drawn upon by the Tribe to recover the resulting costs if the developer fails to do so. The performance bond shall be prepared in a form approved by the Office of the Tribal Attorney and/or underwritten by a surety company. The amount of the bond shall be not less than one hundred twenty-five (125%) percent of the final cost of the mitigation (or subdivision) as estimated by the Planning Department or Tribal Engineer pursuant to the reasoned analysis in Section 20-04.220(C), any improvements to be transferred to the Tribe and any potential damage.

- (2) **Surety Bond.**

- (a) The Planning Department may require the developer to deposit a surety bond with the Tribe to provide a remedy in case the developer fails to comply with the conditions of his or her permit or the requirements of Section 20-04.240(A). The surety bond shall be executed in accordance with a specific escrow agreement approved by the Office of the Tribal Attorney in an amount not less than one hundred twenty-five (125%) percent of the final cost of the mitigation (or subdivision) as estimated by the Planning Department or Tribal Engineer pursuant to the reasoned analysis in Section 20-04.220(C), any improvements to be transferred to the Tribe and any potential damage; and
- (b) If the developer fails to repair any damages or abate any nuisances created as a result of any construction or development activity related to the proposed subdivision, the Tribe shall repair the damage or abate the nuisance itself and may seek recovery of all expenses from the surety bond.

- (C) **Repair and Clean up of Site.** The Tribe shall not release any bonds required by this Section until the developer has removed all construction equipment from the subdivision, cleaned up and removed all construction debris and litter, completed all grading and landscaping, and seeded or otherwise protected all exposed areas. The Planning Department shall perform such inspections as necessary to verify site cleanup and permit compliance, and shall document such cleanup and compliance in writing for the release of bonds.

[History] Ord. 226 (4/5/05).

20-04.250 Planning Commission Review.

- (A) **Public Hearings on Long Plat Subdivisions.** If the Planning Department determines an application for long plat subdivision to be in compliance with this Chapter pursuant to Section 20-04.210(B), the Planning Commission shall hold a public hearing on the proposed long plat subdivision within thirty (30) days of the date the Planning Department makes a written determination pursuant to Section 20-04.210(B).
- (B) **Public Hearings on Certain Short Plat Subdivisions.** If a Determination of Significance is issued pursuant to Chapter 19-01 – Environmental Policy Act relevant to an application for a proposed short plat subdivision, the Planning Commission shall hold a public hearing on the proposed short plat subdivision within thirty (30) days of the date the Planning Department makes a written determination pursuant to Section 20-04.210(B). For any such public hearing on a proposed short plat subdivision, the Planning Department shall provide public notice of the application and public comment period pursuant to Sections 20-04.190 and 200.
- (C) **Notice of Public Hearing.** The Planning Department shall publish a notice of any required public hearing according to the procedures specified under Section 20-04.190(A). 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.
- (D) **Public Hearing Procedures.** Public hearings required under Section 20-04.250(A) or (B), or allowed under Section 20-04.210(B)(3) shall proceed in the following manner:
 - (1) The Planning Department shall provide copies of the application, supporting documents thereto, its recommendation or denial, and any documents in support thereof. Planning Commission members may ask questions of the staff.
 - (2) The applicant may submit written documents or materials in response to the recommendation or decision of the Planning Department. Planning Commission members may ask questions of the applicant.
 - (3) Members of the public may offer comments on the proposal 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 applicant.
 - (5) Closing of the evidentiary portion of the hearing and deliberation on the proposal by the Planning Commission.

- (E) **Closed Record Hearing.** If a public hearing is not held under Section 20-04.250(A) or (B), or 20-04.210(B)(3) by the Planning Commission to consider a proposed subdivision application, the Planning Commission shall review the application in a closed record hearing. Closed record hearings shall be limited to the documents, written public comments, and reports pertaining to the proposed subdivision on file with the Department. No new evidence pertinent to the application shall be given or received. The Planning Department shall submit its written determination of compliance and any supporting documentation. The applicant may submit written documents in response. Written replies may be submitted by either the Department or the applicant at the discretion of the Planning Commission. The Planning Commission shall base its decision upon the record presented at the hearing.
- (F) **Public Record.** The Planning Commission shall make a written or audio record of all hearings.

[History] Ord. 226 (4/5/05).

20-04.260 Planning Commission Determination.

(A) **Long Plat.**

- (1) **Recommended Disposition.** The Planning Commission shall recommend to the Senate one of the following three (3) dispositions of a long plat application within thirty (30) days of the public hearing:
 - (a) Unconditional acceptance;
 - (b) Conditional Acceptance subject to a list of additional requirements; or
 - (c) Rejection.
- (2) **Basis.** The Planning Commission shall review the public hearing record, and shall base its decision upon such record, applying the provisions of the Swinomish 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/or copying at reproduction cost.
- (4) **Application to Senate.** The Planning Commission shall forward the public hearing record and its recommended disposition to the Senate for review and final disposition.

(B) **Short Plat.**

- (1) **Disposition.** The Planning Commission shall make one of the following three (3) dispositions of a short plat application within thirty (30) days of the public hearing:
 - (a) Unconditional acceptance;
 - (b) Conditional Acceptance subject to a list of additional requirements; or
 - (c) Rejection.
- (2) **Basis.** The Planning Commission shall review the public record of the hearing and shall base its decision upon such record, applying the provisions of the Swinomish 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.
- (4) **Appeal.** An aggrieved party may appeal the decision of the Planning Commission issued under this Subsection 20-04.260(B) to the Senate in accordance with Sections 20-04.580 to 20-04.620.

[History] Ord. 226 (4/5/05).

20-04.270 Senate Determination of Long Plat.

- (A) **Disposition.** The Senate shall make one of the following three (3) dispositions of the application within thirty (30) days of either receiving the record from the Planning Commission or satisfaction of any conditions for acceptance imposed by the Planning Commission, whichever occurs later. Such disposition shall be decided in a closed record hearing, following the procedures in Section 20-04.250(E):
 - (1) Unconditional acceptance;
 - (2) Conditional Acceptance subject to a list of additional requirements; or
 - (3) Rejection.
- (B) **Basis.** The Senate shall review the record before the Planning Commission, including the recommendation of the Planning Commission, and shall base its decision upon the entire record, applying the provisions of the Swinomish Code and of Federal law.
- (C) **Written Decision.** The Senate shall issue its decision in writing. Copies shall be provided to the Planning Department, Planning Commission and applicant and shall be available for public inspection and copying at reproduction cost.

- (D) **Appeal.** An aggrieved party may appeal the decision of the Senate in accordance with Sections 20-04.590 through 20-04.620.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

20-04.280 Final Plat and Permit.

- (A) **Finality.** The plat shall become final and may be recorded when signed, date-stamped and assigned a final plat number by the appropriate officials, as required by Subsections (B) and (C) below.
- (B) **Short Plat.** Within fifteen (15) days of approval by the Planning Commission or the Senate, the Chair of the Planning Commission or Senate, as applicable, shall sign and date-stamp the short plat, and the Planning Department shall assign a final short plat number.
- (C) **Long Plat.** Within fifteen (15) days of approval by the Senate, the Chair of the Senate shall sign and date-stamp the long plat, and the Planning Department shall assign a final long plat number.
- (D) **Permit.** Upon approval of a subdivision application and stamping of the final plat, the Planning Department shall issue a subdivision permit.
- (E) **Permit Duration.**
- (1) **Short Plat.** A short plat subdivision permit shall be valid for 36 months.
 - (2) **Long Plat.** A long plat subdivision permit shall be valid for 60 months.
 - (3) **Unrecorded plat.** If any short plat or long plat subdivision permit condition is not satisfied or if the final subdivision is not recorded within the permit period as provided by subsections (E)(1) and (2) above, the plat approval shall be null and void.
 - (4) **Phased development.** If the final plat is being developed in phases according to the approved short plat map or long plat map, the initial phase must be recorded within the approval period, or the phase is null and void. Additional phases may continue to have validity, based on a phasing schedule established in the approval, but may likewise be voided if not recorded as established in the approved phasing plan.

(F) **Innocent Purchaser.**

- (1) An innocent purchaser of a lot created in violation of this Chapter who files a notarized affidavit of innocent purchase with the Planning Department on forms satisfactory to the Director shall be treated as follows for purposes of determining zoning compliance, and for establishing eligibility for building permits and future subdivisions:
 - (a) A lot recognized pursuant to this innocent purchaser provision will be treated the same as a legally subdivided lot if the parcel meets current zoning requirements for access, lot area, lot width, and has the ability to meet the requirements of Title 11, Chapter 6 of the Swinomish Code for septic systems;
 - (b) Innocent purchaser lots which do not meet current zoning requirements, but which did meet development requirements in effect at the time that they were created, will be treated as legally created lots subject to Chapter 20-04 – Zoning; and
 - (c) Innocent purchaser lots which do not meet current zoning requirements and which did not meet the development requirements in effect at the time of their creation will be treated the same as legally created lots for purpose of conveyance, but will not be eligible for building permits.
 - (d) Any innocent purchaser may, alternatively, pursue any other available legal or equitable remedies.
- (2) An individual shall not be considered an innocent purchaser under this Subsection (F) if that person has previously invoked the provisions of this Subsection.
- (3) All contiguous lots created in violation of this Chapter which are under the same ownership at the time of application for innocent purchaser status shall be recognized only as a single lot and combined through a boundary line adjustment.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

20-04.290 Recording Final Plats.

The developer shall promptly record all final plats with the Tribe in accordance with STC 20-04.630. Final plats for property held in trust by the United States for the Tribe or individual Indians shall also be recorded with the Bureau of Indian Affairs Title Plant.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

20-04.300 Re-divisions.

Land in short plat subdivisions shall not be further divided in any manner within five (5) years after the date of recording of the short plat subdivision except through long plat subdivision.

[History] Ord. 226 (4/5/05).

20-04.310 Other Permits.

The Planning Department shall not issue a subdivision or binding site plan permit until the applicant has obtained all other permits required by Tribal and Federal law.

[History] Ord. 226 (4/5/05).

20-04.320 Alteration or Vacation.

(A) **Permit required.** No person shall alter or vacate a recorded subdivision without first obtaining a permit from the Planning Department.

(B) **Application.** The application for an alteration or vacation of a subdivision shall follow the procedures set forth in Sections 20-04.160 through 20-04.280. The Director, or his or her designee, may waive any requirements of the application procedure upon a determination that such waiver would be in the best interest of the applicant, Tribe, and Reservation Community. In addition, the developer shall submit the following material to the Planning Department:

- (1) A written statement of the proposed alteration or vacation signed by a majority of the persons having an ownership interest in the lots, tracts, parcels or divisions in the subdivision to be altered or vacated;
- (2) If necessary to proceed with the alteration or vacation, a written statement signed by all parties to any restrictive covenants that the parties agree to alter or terminate the terms and conditions of the covenants; and
- (3) Any other documents or materials reasonably necessary to determine whether the proposed alteration or vacation is consistent with this Chapter.

[History] Ord. 226 (4/5/05).

20-04.330 Recording Final Plat Alterations or Vacations.

Upon issuance of an alteration or vacation permit pursuant to Section 20-04.320, the applicant shall promptly record all alterations to or vacations of a subdivision with the Tribe in accordance with STC 20-04.630. Alteration or vacation documents for property held in trust by the United States for the Tribe or individual Indians shall also be recorded with the Bureau of Indian Affairs Title Plant.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

Subchapter V – Design and Infrastructure Requirements

20-04.340 Lot Design.

- (A) Lots shall be designed to minimize the need for infrastructure, including but not limited to roadways, driveways, and utilities.
- (B) The Planning Department may authorize a panhandled lot on a case-by-case basis, if requested by the developer in the pre-application meeting, where the panhandled lot is deemed reasonable or necessary
 - (1) To provide access to the subject property,
 - (2) To provide for necessary utility corridors, or
 - (3) For other similarly justifiable reasons.

[History] Ord. 226 (4/5/05).

20-04.350 Gross Acreage.

For the purpose of determining the gross acreage of a proposed land division or proposed lot, the Planning Department shall include the area that would be bounded by the centerline of any existing or proposed road or street, public or private.

[History] Ord. 226 (4/5/05).

20-04.360 Access and Circulation.

- (A) **Design.** Each proposed subdivision shall meet the following access requirements:
 - (1) Each lot within a subdivision shall have lawful access to an established and lawful roadway;
 - (2) A developer shall provide evidence of any required easement from an established and lawful roadway to the subdivision;

- (2) Individual lots shall be accessed by a twenty (20)-foot right-of-way;
 - (3) Road widths within a subdivision shall be minimized where possible, as approved by the Planning Department;
 - (4) Pedestrian circulation shall be facilitated through the installation of sidewalks, walkways, paths or trails;
 - (5) Where practicable, the existing rural roadway character of the proposed subdivision shall be maintained through the use of smaller roadway widths and curb cuts, fewer driveways, and the preservation of roadside vegetation;
 - (6) Traffic flow shall be facilitated by the installation of street name signs and traffic-control signs and/or traffic improvements;
 - (7) Minimum road frontage of each lot shall be seventy feet (70') except when located on a cul-de-sac. The minimum road frontage for a lot on a cul-de-sac shall be forty feet (40); and
 - (8) Where a school is located within a 1/4 mile of a subdivision, the Planning Department may require the developer to install sidewalks or walkways between the land division and the school.
- (B) **Ownership.** Where a subdivision is proposed on trust land, a developer shall evidence intent to dedicate new streets and roads to the BIA as public rights-of-way on plat documents filed with the Planning Department, said plat documents showing the dedication. The Tribe shall evidence its acceptance of the dedication by accepting the plat.
- (C) The developer shall provide the Planning Department with documents demonstrating that the proposed subdivision is in compliance with this Section.
- (D) The Planning Department may require a developer of a proposed subdivision adjacent to Tribal tidelands or beaches to grant an easement to the Tribe and its members that provides reasonable access through the subdivision to the tidelands.

[History] Ord. 226 (4/5/05).

20-04.370 Open Space.

- (A) **Purpose.** Establishment of open space shall be to:
- (1) Enhance the ecological values of riparian corridors, tidal marshes, or sensitive areas; or
 - (2) Enhance recreational and cultural values of parks and historic sites; or
 - (3) Achieve similar enhancement values or benefits as may be deemed appropriate or necessary by the Planning Department.

- (B) **Design.** Each subdivision shall meet the following open space requirements:
- (1) Where physically practicable, open space shall not be fragmented but shall be aggregated in contiguous areas of the proposed subdivision;
 - (2) Where physically practicable, open space shall connect to adjacent off-site open space areas, parks, or sensitive areas;
 - (3) Where physically practicable, open space shall be designed to preserve off-site views from the subject property;
 - (4) Open space buffers providing year-round screening shall be established along all property lines where the land adjacent to the property line exists in a natural undeveloped state or is an existing or proposed park; and
 - (5) A buffer vegetated with native plants shall be established adjacent to all arterial and collector roads.
- (C) **Ownership.** Ownership of the open space required by this Section may take the following forms:
- (1) **Private Ownership.** Open space may remain in private ownership, Provided that access to and use of the open space is secured through easements, restrictive covenants or other similar means;
 - (2) **Common Ownership.** Open space may be held in common by a property or home owners association or similar organization, or by a land trust or similar organization; or
 - (3) **Tribal Ownership.** Ownership of open space may be transferred to the Tribe in which event the Tribe may request the United States place the open space in trust for the benefit of the Tribe.

[History] Ord. 226 (4/5/05).

20-04.380 Open Space Management Plan.

- (A) The developer shall submit an Open Space Management Plan (OSMP) conforming to the requirements of this section prior to final plat approval.
- (B) The OSMP shall include the following:
- (1) A list of all allowable uses within areas designated as open space;
 - (2) A description of the frequency and scope of maintenance activities;

- (3) Identification of the management entity responsible for the maintenance of open space, if different from the owner(s) of the open space; and
 - (4) Provision for periodic inspection of the open space by the Planning Department.
- (C) The developer shall make any modifications or amendments to the OSMP necessary to comply with the requirements of this Chapter.

[History] Ord. 226 (4/5/05).

20-04.390 Maintenance of Open Space.

- (A) Unless otherwise provided by the OSMP, the owner(s) of the open space shall be responsible for management and maintenance of the open space identified in the OSMP.
- (B) If the open space is not managed or maintained according to the OSMP, the Planning Department shall notify the owner or management entity of the alleged failures and request the owner or management entity to come into compliance with the OSMP within 30 days. If the owner or management entity fails to come into compliance within that period of time, the Tribe reserves the right to manage and maintain the open space itself. The owner or management entity shall be responsible for and shall reimburse the Tribe for all reasonable and necessary management and maintenance costs incurred by the Tribe.

[History] Ord. 226 (4/5/05).

20-04.400 Landscaping.

- (A) Each developer shall design and establish landscaping for the proposed subdivision according to the following requirements:
 - (1) **Landscaping Plan.** The developer shall submit a site plan, at a scale determined by the Director, depicting the location of all vegetative plantings, listing the types, numbers, and size or age of plants, and identifying other landscape features, including but not limited to fencing, paths, irrigation structures, walls, rockeries, decks, and other similar structures and features.
 - (2) **Topsoil.** Topsoil and other natural materials disturbed during the course of subdivision development and construction shall be redistributed on all re-graded surfaces to provide even cover to all disturbed areas, and shall be stabilized through seeding or planting.
 - (3) **Preservation.** Maximum effort shall be made by the developer to preserve pre-existing, native and mature plantings.

- (4) **Debris.** All slash, brush, weeds, litter, scrap, excess building materials and other debris shall be disposed of by the developer in accordance with applicable regulations.
- (5) **Street Trees.** Trees shall be planted within a road right-of-way to preserve or enhance the character of the subdivision, to provide shade, and to replace and/or re-establish trees that have been removed during development and construction of the subdivision.

(B) Landscaping shall conform to all other provisions of this Chapter.

[History] Ord. 226 (4/5/05).

20-04.410 Water Supply.

- (A) The developer shall connect all units within the subdivision to an approved water supply prior to occupancy.
- (B) The developer shall connect all units within any short plat subdivision to the Tribal water system, if at least one of the subdivision boundary lines is within two hundred feet (200') of a Tribal water line.
- (C) The developer shall connect all units within any long plat subdivision to the Tribal water supply and distribution system.
- (D) If the Comprehensive Plan, a water supply plan, or other official Tribal document proposes to extend the Tribal water supply and distribution system to a subdivision within six (6) years from the date an application for the subdivision is accepted, the Planning Department may require the developer to install the infrastructure necessary to connect to the Tribal water supply and distribution system. In addition, the Tribe may require the developer to execute a "no protest to future connection" agreement, a "payment in lieu of the improvements" agreement, or other similar agreement.
- (E) The developer shall locate fire hydrants and provide documentation to demonstrate conformance to fire flow requirements pursuant to the provisions of Chapter 12-05, the Uniform Fire Code.

[History] Ord. 226 (4/5/05).

20-04.420 Sewage Disposal.

- (A) **All Subdivisions.** Prior to occupancy, the developer shall connect all dwelling units within any subdivision to a public or permitted private sewage collection and disposal system.
- (B) **Short Subdivisions.** The developer shall connect all dwelling units within any short plat subdivision to a Tribal sewage collection and disposal system, if at least one of the subdivision boundary lines is within two hundred feet (200') of a Tribal sewer line.

- (C) **Long Subdivisions.** The developer shall connect all units within any long plat subdivision to a Tribal sewage collection and disposal system.
- (D) **Future Extensions.** If the Comprehensive Plan, a wastewater management or sanitary system plan, or other official Tribal document proposes to extend the Tribal sewage collection and disposal system to a subdivision within six (6) years from the date of application for the subdivision is accepted, the Planning Department may require the developer to install the infrastructure necessary to connect to the Tribal sewage collection and disposal system. In addition, the Tribe may require the developer to execute a “no protest to future connection” agreement, a “payment in lieu of the improvements” agreement, or other similar agreement.
- (E) **Septic Systems.** If a community or public sewage collection and disposal system is not available or cannot be extended, the developer may build a private on-site septic system under a permit issued by the Tribe pursuant to Chapter 11-06 – Private Water and Sewer Systems.

[History] Ord. 226 (4/5/05).

20-04.430 Storm Water and Drainage.

- (A) Storm water management facilities shall be designed, established, and maintained consistent with this Chapter 12-05, Stormwater Management, and any rules or regulations promulgated thereunder.
- (B) The developer shall use site analysis and best available science to minimize off-site storm water runoff, increase on-site storm water infiltration, encourage natural filtration functions, preserve or restore natural drainage systems, and minimize off-site discharge of pollutants.

[History] Ord. 226 (4/5/05).

20-04.440 Lighting.

The Planning Department may require a developer to install streetlights and other lighting fixtures within the proposed subdivision when determined by the Planning Department to be necessary for the safety and convenience of the public.

[History] Ord. 226 (4/5/05).

Subchapter VI – Lot Line Adjustments

20-04.450 Scope.

- (A) The lot line adjustment process shall be available to any landowner who seeks to:
 - (1) Conform the lot lines on the ground to the legal description in the deed;
 - (2) Allow the enlargement or merging of lots to improve a building site;
 - (3) Correct situations where an established use is located across a lot line;
 - (4) Achieve increased setbacks from property lines or sensitive areas; or
 - (5) Accomplish other similar purposes.

- (B) The lot line adjustment process shall not be available to:
 - (1) Create any additional lot or building site;
 - (2) Affect a public or private road or alley;
 - (3) Create a lot that does not qualify as a building site;
 - (4) Reduce the overall area in a subdivision devoted to open space;
 - (5) Involve lots that do not have a common boundary; or
 - (6) Involve more than four (4) lots.

- (C) The lot line adjustment process is available to the Tribe for the purpose of making minor adjustments or alterations to the boundary lines of Tribal property, including property acquired for the purpose of widening a road, establishing an easement, or other public purpose.

[History] Ord. 226 (4/5/05).

20-04.460 Application.

- (A) **Required.** Any landowner seeking a lot line adjustment shall submit the following documents and materials to the Planning Department:
 - (1) A revised legal description of each of the lots to be affected by the lot line adjustment prepared by an engineer or land surveyor licensed, bonded and otherwise qualified under the laws of the State of Washington;

- (2) A revised plat of each of the lots to be affected by the lot line adjustment prepared by an engineer or land surveyor licensed, bonded, or otherwise qualified under the laws of the State of Washington;
 - (3) A statement in support of the lot line adjustment process signed by all persons with an ownership interest in the affected lots and witnessed by a notary public licensed, bonded, and otherwise qualified under the laws of the State of Washington; and
 - (4) A title insurance certificate updated not more than 30 days prior to recording of the adjustment which includes all parcels within the adjustment.
- (B) **Discretionary.** The Planning Department, in its sole discretion, may require the landowner seeking a lot line adjustment to submit other documents to determine whether the proposed lot line adjustment is in compliance with this Chapter.

[History] Ord. 226 (4/5/05).

20-04.470 Approval.

- (A) Prior to final approval, documentation authorizing the transfer of property ownership shall be placed on the revised plat along with the legal descriptions of those portions of land being transferred when individual lots are under separate ownership. Lot lines under the same ownership shall be adjusted upon the recording of the lot line adjustment.
- (B) The Director, or his or her designee, shall approve an application for a lot line adjustment based upon a written finding that said lot line adjustment is in conformance with this Chapter.
- (C) A party aggrieved by a decision of the Director may request a hearing before the Planning Commission as provided for under Sections 20-04.570 to 20-04.620.

[History] Ord. 226 (4/5/05).

20-04.480 Recording of Lot Line Adjustment.

Upon approval of a lot line adjustment by the Director, pursuant to Section 20-04.470, the applicant shall promptly record an approved lot line adjustment with the Tribe in accordance with STC 20-04.630. A lot line adjustment for property held in trust by the United States for the Tribe and individual Indians shall also be recorded with the Bureau of Indian Affairs Title Plant. All persons having an ownership interest within the lot line adjustment shall sign the final recording document in the presence of a notary public.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

Subchapter VII – Condominiums

20-04.490 Permit.

No person shall build a condominium without first obtaining a condominium development permit from the Planning Department.

[History] Ord. 226 (4/5/05).

20-04.500 Application Procedure.

All applicants for a condominium development permit shall follow the procedures for obtaining a long plat subdivision permit established in Sections 20-04.160 through 20-04.280 and any rules or regulations promulgated thereunder, subject to the terms of this Subchapter, Provided that instead of a long plat, the application shall contain a binding site plan. Additionally, the application shall include:

- (A) Architectural drawings of the proposed building envelopes, including side and elevation views, and the proposed common areas and private areas within the buildings; and
- (B) A copy of the proposed declaration of condominium and bylaws.

[History] Ord. 226 (4/5/05).

20-04.510 Binding Site Plan.

- (A) **Required Site Plan.** An applicant for a condominium permit shall submit a binding site plan for the proposed development. The binding site plan shall:
 - (1) Meet or exceed all the requirements for a long plat subdivision as set forth in Sections 20-04.130 through 150 and Sections 20-04.340 through 440; and
 - (2) Identify the following:
 - (a) All proposed and existing land uses;
 - (b) All proposed and existing parking facilities on site;
 - (c) All proposed mitigation measures, if any, required under this Chapter;
 - (d) All proposed and pre-existing common areas; and
 - (e) All proposed and pre-existing private areas appurtenant to dwelling units. Private areas shall include, but not be limited to, patios, individual garden plots, and individual parking spaces.

(B) **Waiver.** The Planning Department, in its sole discretion, may waive any requirement for a binding site plan if it determines that:

- (1) The requirement being waived would be unreasonably burdensome and vexatious to the applicant; and
- (2) Waiver of the requirement would be in the best interest of the Tribe.

[History] Ord. 226 (4/5/05).

20-04.520 Recording of Binding Site Plan.

Upon approval of a condominium permit by the Senate pursuant to Section 20-04.270, the applicant shall promptly record the binding site plan for a condominium with the Tribe in accordance with STC 20-04.630. A binding site plan for property held in trust by the United States for the Tribe and/or individual Indians shall also be recorded with the Bureau of Indian Affairs Title Plant.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

Subchapter VIII – Commercial and Industrial

20-04.530 Permit.

No person shall construct a commercial or industrial facility without first obtaining a commercial or industrial development permit from the Planning Department.

[History] Ord. 226 (4/5/05).

20-04.540 Application Procedure.

All applicants for a commercial or industrial development permit shall follow the procedures for obtaining a long plat subdivision permit established in Sections 20-04.160 through 20-04.280 and any rules or regulations promulgated thereunder, subject to the terms of this Subchapter, Provided that:

- (A) Instead of a long plat, the application shall contain a binding site plan; and
- (B) The Planning Director, or his or her designee, may approve the development permit when the development project value is less than one hundred fifty thousand dollars (\$150,000) and the site area to be developed is less than one (1) acre.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

20-04.550 Binding Site Plan.

- (A) **Required Site Plan.** An applicant for a commercial or industrial development permit shall submit a binding site plan for the proposed development. The binding site plan shall:
- (1) Meet or exceed all the requirements of a long plat subdivision as set forth in Sections 20-04.130 through 150 and Sections 20-04.340 through 440; and
 - (2) Identify the following:
 - (a) All proposed and existing uses of the commercial or industrial development;
 - (b) All proposed and existing parking facilities onsite; and
 - (c) All proposed mitigation measures, if any, required under this Chapter.
- (B) **Waiver.** The Planning Department, in its sole discretion, may waive any requirement for a binding site plan for a commercial or industrial development permit if it determines that:
- (1) The requirements being waived would be unreasonably burdensome and vexatious to the applicant; and
 - (2) Waiver of the requirements would be in the best interest of the Tribe.

[History] Ord. 226 (4/5/05).

20-04.560 Recording of Binding Site Plan.

Upon approval of a permit issued under this Subchapter by the Senate pursuant to Section 20-04.270, the applicant shall promptly record a binding site plan for a commercial and industrial development with the Tribe in accordance with STC 20-04.630. A binding site plan for property held in trust by the United States for the Tribe and/or individual Indian shall also be recorded with the Tribe and the Bureau of Indian Affairs Title Plant.

[History] Ord. 257 (7/9/07); Ord. 226 (4/5/05).

Subchapter IX – Appeals, Computation of Time and Law Applicable

20-04.570 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 calendar days from the date of notice of the challenged decision or within thirty 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.
- (C) The Planning Commission hearing shall be conducted in accordance with Sections 20-04.250(C), (D) and (F) and 20-04.260(B).

[History] Ord. 226 (4/5/05).

20-04.580 Appeals of Planning Commission Decisions.

- (A) Any party aggrieved by a decision of the Planning Commission for which a right of appeal is provided in this Chapter may appeal that decision to the Senate by filing a written notice of appeal within thirty calendar days from the date of notice of the decision; provided, however, that this Section is not applicable to recommendations made by the Planning Commission to the Senate.
- (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.
- (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 ruling.

[History] Ord. 226 (4/5/05).

20-04.590 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 Senate. 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 Senate. The Tribal Court shall not consider any issue that was not raised by the appealing party in the administrative proceedings 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 Senate. The Court of Appeals shall not consider any issue that was not raised by the appealing party in both the administrative proceedings before 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):

- (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. 226 (4/5/05).

20-04.600 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 20-04.570 to 20-04.590 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. 226 (4/5/05).

20-04.610 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. 226 (4/5/05).

20-04.620 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. 226 (4/5/05).

Subchapter X -- Recording

20-04.630 Process for Recording.

For purposes of this chapter, recording with the Tribe consists of the delivery of a document to the Tribe's recording officer, acknowledgment of receipt by the recording officer, and of the notation on the document of the date and time of receipt by the recording officer.

[History] Ord. 257 (7/9/07).

Subchapter XI -- Repealer, Severability, and Effective Date

20-04.640 Repealer.

[reserved]

[History] Ord. 226 (4/5/05).

20-04.650 Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions shall have full force and effect.

[History] Ord. 226 (4/5/05).

20-04.660 Effective Date.

The provisions of this Chapter shall become effective immediately upon approval by the United States Secretary of the Interior or his or her designee.

[History] Ord. 226 (4/5/05).