

Swinomish Tribal Community  
Ordinance #73; Tribal Water Resources Protection Ordinance and Legislative Findings  
Contact; Edwin Knight, Environmental Planner  
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General Ordinance  
Adopted: 1990

ORDINANCE NO. 73

Tribal Water Resources Protection Ordinance and Legislative Findings

WHEREAS, the Swinomish Indian Tribal Community is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934; and

WHEREAS, the Swinomish Indian Senate is the governing body of the Swinomish Indian Reservation located near the Town of LaConner, Washington; and

WHEREAS, Article VI section 1(b)(i)(k)(1)(m)(q) and (s) and Article VI Section 5 of the Constitution and Bylaws of the Tribal Community provide authority for the adoption of the attached Water Resources Protection Ordinance and Legislative Findings; and

WHEREAS, a serious need exists for the effective management and protection of the water resources of the Swinomish Indian Reservation to prevent uncontrolled use and obstruction of these resources caused by over appropriation, waste, unreliable water supplies, degradation of water quality, destruction of fish and other wildlife habitats and the loss of other economic and environmental amenities needed to insure an acceptable quality of life within the Reservation; and

WHEREAS, the Swinomish Indian Tribal Community has assumed responsibility for water quality control and management on their reservation lands as anticipated in the Clean Water Act 33 U.S.C. S1251 et. seq. and the Safe Drinking Water Act 42 U.S.C. S300 et. seq.; and

WHEREAS, the adoption of a comprehensive Water Resources Protection Ordinance and Legislative Findings is essential to implementing the requirements and responsibilities set out in the Clean Water Act and the Safe Drinking Water Act: NOW THEREFORE,

BE IT ENACTED by the Swinomish Indian Senate that the attached Ordinance No. 73 and Legislative Findings are hereby approved and adopted.the lack of sufficient amounts of safe drinking water.

(6) As part of the Plan, the affected jurisdictions executed a Memorandum of Understanding (MOU) recognizing the Swinomish Tribe as the purveyor of public drinking water for all lands within the exterior boundaries of the Swinomish Indian Reservation. Under the MOU, the Tribe

accepted the responsibility for providing water to all residents of the reservation.

(7) In 1986, the Swinomish Tribe adopted Ordinance No. 51 creating the Swinomish Utility Commission. The Commission was formed initially to oversee the construction and development of a water supply system for the delivery of safe drinking water to all residents of the Swinomish Indian Reservation. Non-Indian representation has been provided for on the Commission.

(8) In 1987, with partial funding and the full support of the Washington State Department of Social and Health Services, the Tribe constructed a centrally located well on the Swinomish Indian Reservation that withdraws water from a high quality and productive groundwater aquifer lying within the reservation boundaries. The Tribe also constructed water supply lines to the southern part of the reservation where a majority of Tribal members reside and where the Tribe's public housing is located. For the first time ever, satisfactory fire flow pressure was established at the higher elevations of the reservation and reservation residents were no longer dependent upon water supplied from the neighboring Town of LaConner, located east of the reservation and Fidalgo Island.

(9) Subsequently, in 1987, the Tribe extended its water system to several communities on the west side of the reservation along Skagit Bay. These communities are predominantly comprised of non-Indian residents that had an inadequate water supply.

(10) In 1988, the Swinomish Tribe constructed an additional well to increase the capacity of the Tribe's water system and in addition constructed a water supply line connecting the Tribe's water system to the domestic water supply of the City of Anacortes. As a result, the Tribe has access to a supplemental source of drinking water for reservation residents on an as needed and back-up basis.

(11) Because the on-reservation aquifer is the primary source of drinking water for the Reservation, the recharge area surrounding the wells must be protected. Any unplanned or inappropriate development within the wellfield recharge areas could render Reservation drinking water unfit for domestic use and require additional costly water quality treatment measures to meet Federal drinking water standards.

## 2 LEGISLATIVE FINDINGS

As part of the Swinomish Indian Senate's deliberations on the adoption of Ordinance No. 73, the Swinomish Indian Tribal Community Water Resources Protection Ordinance, the Senate finds as follows:

(1) The Swinomish Indian Senate is the governing body of the Swinomish Indian Tribal Community and the Swinomish Indian Reservation which occupies the peninsula at the southeast end of Fidalgo Island in Skagit County, Washington.

(2) Fidalgo Island is surrounded by salt water bays, straits, and channels and has limited quantities of fresh water available from wells in the island's underlying groundwater aquifers. During the island's early settlement by non-Indians, relatively shallow wells provided a satisfactory water supply to the residents of the Swinomish Indian Reservation as well as the rest of Fidalgo Island. For the last 10 years or more, however, increased population, residential development and the full-time occupation of previously seasonal residences have resulted in a shortage of potable water. As a result, wells located in proximity to the island's waterfront have gone dry for several months during the summer and have experienced salt water intrusion. Water quality, especially in shallow wells, is increasingly a public health concern.

(3) Although an adequate supply of water is piped from the Skagit River to the City of Anacortes on Fidalgo Island, that domestic water supply is not available to communities that are not located in proximity to the pipeline itself or to the municipal boundaries of the City of Anacortes.

(4) In 1982, the Skagit County Board of Commissioners determined that Fidalgo Island constituted a critical water supply area for the purposes of applicable state statutory law. That law required among other things, that local state governments having jurisdiction over Fidalgo Island, including Skagit County, municipal governments and public utility districts, meet to resolve problems associated with the water supply shortage. Although not required to participate, the Swinomish Tribe voluntarily participated in all of the critical water supply meetings which resulted in the adoption of the Fidalgo Island Critical Water Supply System Plan (the "Plan").

(5) In 1986 the Skagit County Board of Commissioners imposed a moratorium on residential and other construction on Fidalgo Island as a result of the water shortage. Although it is the Tribe's position that the state moratorium is not applicable to lands within the exterior boundary of the Reservation, the State's action evidenced a serious health problem associated with

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the lack of sufficient amounts of safe drinking water.

(6) As part of the Plan, the affected jurisdictions executed a Memorandum of Understanding (MOU) recognizing the Swinomish Tribe as the purveyor of public drinking water for all lands within the exterior boundaries of the Swinomish Indian Reservation. Under the MOU, the Tribe accepted the responsibility for providing water to all residents of the reservation.

(7) In 1986, the Swinomish Tribe adopted Ordinance No. 51 creating the Swinomish Utility Commission. The Commission was formed initially to oversee the construction and development of a water supply system for the delivery of safe drinking water to all residents of the Swinomish Indian Reservation. Non-Indian representation has been provided for on the Commission.

(8) In 1987, with partial funding and the full support of the Washington State Department of Social and Health Services, the Tribe constructed a centrally located well on the Swinomish

Indian Reservation that withdraws water from a high quality and productive groundwater aquifer lying within the reservation boundaries. The Tribe also constructed water supply lines to the southern part of the reservation where a majority of Tribal members reside and where the Tribe's public housing is located. For the first time ever, satisfactory fire flow pressure was established at the higher elevations of the reservation and reservation residents were no longer dependent upon water supplied from the neighboring Town of LaConner, located east of the reservation and Fidalgo Island.

(9) Subsequently, in 1987, the Tribe extended its water system to several communities on the west side of the reservation along Skagit Bay. These communities are predominantly comprised of non-Indian residents that had an inadequate water supply.

(10) In 1988, the Swinomish Tribe constructed an additional well to increase the capacity of the Tribe's water system and in addition constructed a water supply line connecting the Tribe's water system to the domestic water supply of the City of Anacortes. As a result, the Tribe has access to a supplemental source of drinking water for reservation residents on an as needed and back-up basis.

(11) Because the on-reservation aquifer is the primary source of drinking water for the Reservation, the recharge area surrounding the wells must be protected. Any unplanned or inappropriate development within the wellfield recharge areas could render Reservation drinking water unfit for domestic use and require additional costly water quality treatment measures to meet Federal drinking water standards.

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(12) Unauthorized extraction of water from the Reservation aquifer poses a serious contamination threat to the health and safety of Swinomish Indian Reservation residents and the members of the Swinomish Indian Tribal Community.

(13) Salt water intrusion resulting from the unauthorized extraction of water from private wells compounds the negative impact on the water resources of the Reservation.

(14) Federal policy and regulations as embodied in the Safe Drinking Water Act 42 U.S.C. S1451 and the Clean Water Act 33 U.S.C. S518 recognize the regulatory authority of qualifying Indian Tribes over waters within their reservation boundaries.

(15) In September of 1989 the Swinomish Tribe was formally recognized by the Environmental Protection Agency (EPA) as having the capability and authority to manage its groundwater resources and consequently being treated as a State. A Tribal multi-year groundwater protection program is being funded by EPA under Section 106 of the Clean Water Act. This will allow the Tribe to further develop its groundwater regulations, standards and enforcement authority necessary to protect this irreplaceable resource.

(16) Non-Indian and Indian owned lands are interspersed throughout the Reservation in a checkerboard pattern. Because of the physical location of the Swinomish Indian Reservation on the southeast peninsula of Fidalgo Island, it is geographically impractical and economically infeasible to provide water services and protection to Reservation residents other than by a unified and comprehensive tribal regulatory scheme.

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SWINOMISH INDIAN TRIBAL COMMUNITY  
WATER RESOURCES PROTECTION ORDINANCE

ARTICLE I

GENERAL PROVISIONS

Section 1.010 Title

This Ordinance shall be known as the Swinomish Indian Tribal Community Water Resources Protection Ordinance.

Section 1.020 Purpose

In order to provide for a permanent homeland for the Swinomish Indian Tribal Community; to protect the health, safety, and welfare and the economic security of the citizens of the Swinomish Indian Tribal Community and Reservation residents; to develop, manage, and preserve the water resources of the Swinomish Indian Tribal Community; to secure a just and equitable distribution of the use of water within the exterior boundaries of the Swinomish Indian Reservation through a uniform and coherent system of regulation; and to provide for the exercise of the inherent sovereign powers of self-government by the Swinomish Indian Tribal Community, the Swinomish Indian Tribal Community hereby asserts its sovereign authority over all actions taken within the exterior boundaries of the Swinomish Indian Reservation which affect the use of water by the Swinomish Indian Tribal Community and Reservation residents.

Section 1.030 Application of the Code

Upon the effective date of this Code, it shall be unlawful for any person within the exterior boundaries of the Swinomish Indian Reservation to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the exterior boundaries of the Swinomish Indian Reservation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except use rights obtained under and subject to this Code.

## Section 1.040 Consistency with Comprehensive Plan

This Ordinance shall be implemented in accordance with applicable Swinomish Comprehensive Land Use and Natural Resource policies. Specifically, the application of this Ordinance shall seek consistency and concurrency with the official Swinomish Zoning Ordinance, Swinomish Comprehensive Plan, Swinomish Comprehensive

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Water Facilities Plan, Coastal Management Plan, and other land use and natural resource policies and regulations of the Tribe. In no event shall the issuance of water use rights and privileges conflict with land resource uses as specified in those plans.

## Section 1.050 Nature of Ownership

a) The Swinomish Indian Tribal Community is the owner of the full equitable title to all of the waters within the exterior boundaries of the Swinomish Indian Reservation as defined in Section 1.060 and that title resides undiminished in the Swinomish Indian Tribal Community. The United States holds the legal title to those waters solely as trustee for the Swinomish Indian Tribal Community.

b) All rights to the use of the water of the Swinomish Indian Tribal Community are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Swinomish Indian Tribal Community, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

## Section 1.060 Waters of the Swinomish Indian Tribal Community Defined

The waters of the Swinomish Indian Tribal Community are defined as: (1) all waters reserved at any time for any purpose to the Swinomish Indian Tribal Community, and to the Swinomish Indian Reservation by the Swinomish Indian Tribal Community or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Swinomish Indian Tribal Community through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located within the exterior boundaries of the Swinomish Indian Reservation.

## ARTICLE II

### NOTICE OF ENACEMENT AND EFFECT

#### Section 2.010 Notice Required

To insure that all persons and entities affected by this Code are given adequate notice of the

enactment and effect of this Code, the Director of the Office of Planning and Community Development shall, within 90 days after the effective date of this Code, provide for public notice of its enactment and effect in

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accordance with the provisions of this section.

#### Section 2.020 Contents of Notice

a) Such public notice shall contain the following statement, prominently displayed and in large boldface type:

**NOTICE: AFTER \_\_\_\_\_, NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE EXTERIOR BOUNDARIES OF THE SWINOMISH INDIAN RESERVATION WHICH AFFECTS THE USE OF WATER WITHIN THE EXTERIOR BOUNDARIES OF THE SWINOMISH INDIAN RESERVATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE SWINOMISH INDIAN TRIBAL COMMUNITY WATER RESOURCES PROTECTION ORDINANCE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT, SWINOMISH INDIAN TRIBAL COMMUNITY, P.O. BOX 817, 950 MOORAGE WAY, LACONNER, WA 98257. COMPLETE COPIES OF THE SWINOMISH INDIAN TRIBAL COMMUNITY WATER RESOURCES PROTECTION ORDINANCE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.**

b) In addition to the foregoing statement, the Director of the Office of Planning and Community Development may include in such public notice additional information deemed necessary to assure adequate notice of the enactment and legal effect of this Code.

#### Section 2.030 Notice -- How Given

The Director of the Office of Planning and Community Development shall give notice of the provisions of this Code as follows:

- 1) The notice provided above shall be placed in a newspaper of local circulation at least twice each month over a two month period.
- 2) The notice provided above shall be placed in a prominent and conspicuous location at the Swinomish Indian Tribal Community Tribal Offices, Tribal Health Clinic, and in such other locations as are deemed necessary or appropriate.
- 3) The Director of the Office of Planning and Community Development may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this

Code.

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### ARTICLE III

#### SWINOMISH CULTURAL AND ENVIRONMENTAL PROTECTION AGENCY OF THE SWINOMISH INDIAN SENATE

##### Section 3.010 Swinomish Cultural and Environmental Protection Agency - General Powers

In administering this Code, the Swinomish Cultural and Environmental Protection Agency may, in addition to other actions:

- 1) Enter appropriate orders;
- 2) Recommend to the Swinomish Indian Senate for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this Code;
- 3) File or intervene in any lawsuit, at the direction of the Swinomish Indian Senate, or the Chairman of the Swinomish Indian Senate;
- 4) Receive regular reports from the Director of the Office of Planning and Community Development;
- 5) Make determination of availability and need as provided for in Article VIII of the Code;
- 6) In cooperation with the Tribal Planning Department, negotiate for and propose to the Swinomish Indian Senate the purchase or sale of real or personal property or other interests;
- 7) With the consent of the Swinomish Indian Senate, enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Swinomish Indian Reservation, for appropriate purposes;
- 8) In cooperation with the other standing committees of the Swinomish Indian Senate, determine existing and foreseeable uses of and needs for water and other related resources; and
- 9) Take other actions as provided for in this Code.

##### Section 3.020 Disqualification

Any member of the Swinomish Cultural and Environmental Protection Agency shall be disqualified either on his/her own motion or upon a majority vote of the Swinomish Cultural and Environmental Protection Agency whenever he/she is unable, because of a direct economic interest or other conflict of interest, to serve impartially with respect to any matter.



### Section 3.030 Water Reserves

In connection with a determination of availability and need as provided for in Article VIII or in connection with other actions taken under this Code, the Swinomish Cultural and Environmental Protection Agency may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Tribal and other needs.

### Section 3.040 Water Assessments

Whenever the Swinomish Cultural and Environmental Protection Agency of the Swinomish Indian Senate determines that water not presently available is necessary for purposes and projects beneficial to part or all of the Swinomish Indian Tribal Community and the Reservation inhabitants thereof, the Swinomish Cultural and Environmental Protection Agency may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

### Section 3.050 Designations of Local Management Areas

The Swinomish Cultural and Environmental Protection Agency may, upon the recommendation of the Director of the Office of Planning and Community Development, Tribal Departments or any person, isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, "local management areas," such as civic water districts, wellhead protection areas or groundwater recharge areas, for specialized administration under regulations adopted pursuant to this Code.

### Section 3.060 Charges for Water Uses

Reasonable charges may be imposed by regulations of the Swinomish Cultural and Environmental Protection Agency for the use of the waters of the Swinomish Indian Tribal Community. Additional charges may be imposed on users by regulations of the Swinomish Cultural and Environmental Protection Agency and/or the Swinomish Utility Authority for the operation and maintenance of water delivery systems. Waivers of charges may be granted by the Swinomish Cultural and Environmental Protection Agency, if the use is shown to be of benefit to the Swinomish Indian Tribal Community.

### Section 3.070 Swinomish Cultural and Environmental Protection Agency - Method of Operation

In performing its duties under this Code, the Swinomish Cultural and Environmental Protection Agency is a Standing Committee of

Senate.

## ARTICLE IV

### Office of Planning and Community Development

#### Section 4.010 Information Function

It shall be the duty of the Director of the Office of Planning and Community Development to gather for Tribal use and for submission to the Swinomish Cultural and Environmental Protection Agency information related to the waters administered under this Code. To this end the Director of the Office of Planning and Community Development shall:

- 1) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Swinomish Indian Reservation;
- 2) Develop such additional data and studies pertaining to water availability, quality, and use as are necessary to accomplish the objectives of this Code;
- 3) Solicit public comment and obtain expert advice when appropriate;
- 4) Investigate water uses and other activities affecting the waters within the Swinomish Indian Tribal Community to determine compliance with this Code and with applicable regulations, orders, determinations permits, water quality standards, etc., issued pursuant to this Code; and
- 5) Investigate water quality when appropriate.

#### Section 4.020 Enforcement Function

It shall be the duty of the Director of the Office of Planning and Community Development to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Office of Planning and Community Development may:

- 1) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;
- 2) Initiate, by means provided herein, proceedings for

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violations of this Code and the actions taken under this Code; and

3) Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and compel testimony and data, by Swinomish Tribal Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

4) All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. S1301 et seq.

#### Section 4.030 Advisory Function

The Director of the Office of Planning and Community Development may, from time to time, make proposals to the Swinomish Cultural and Environmental Protection Agency concerning the following:

- 1) The advisability of establishing local management areas as provided for in Article III of this Code;
- 2) The advisability of making determinations of availability and need as provided for in Article VIII of this Code;
- 3) The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and to minimize pollution and thermal degradation;
- 4) The advisability of purchasing, selling, exchanging and acquiring any interest in real or personal property;
- 5) The advisability of participating in administrative proceedings, law suits and other legal proceedings;
- 6) The advisability of entering into administrative agreements and other cooperative ventures with Tribal, local, state or federal agencies outside of the Swinomish Indian Senate and the Swinomish Cultural and Environmental Protection Agency, for appropriate purposes;
- 7) The advisability of amending or otherwise changing sections of this Code or adding new sections; and
- 8) The advisability of taking other actions which will further the policies and purposes contained herein and increase the effectiveness of this Code.

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#### Section 4.040 Administrative Function

In administering this Code, the Director of the Office of Planning and Community Development

may:

- 1) Grant, deny, modify and revoke water use permits;
- 2) Make determinations of water use rights;
- 3) Initiate proceedings to enforce this Code;
- 4) Insure, in coordination with other appropriate agencies, adequate water levels in streams, ponds, and wetlands to protect Swinomish traditional religious practices, wildlife conservation and other values; and
- 5) Enter appropriate orders.
- 6) Develop and propose standards and regulations concerning water quality and water allocation for Swinomish Cultural and Environmental Protection Agency review and Swinomish Indian Senate adoption.

## ARTICLE V

### GUIDELINES FOR ADMINISTRATION

#### Section 5.010 General Policy Provisions

In taking any action under this Code, the Swinomish Cultural and Environmental Protection Agency and the Director of the Office of Planning and Community Development shall be guided by the following basic policy guidelines:

- 1) Whenever practicable, actions taken should benefit the Swinomish Indian Tribal Community and the members of the Swinomish Indian Tribal Community and further the objective for which the Swinomish Indian Reservation was created: to provide a permanent home and abiding place for the members of the Swinomish Indian Tribal Community, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Swinomish Indian Tribal Community. If there is presented to the Swinomish Cultural and Environmental Protection Agency or the Director of the Office of Planning and Community Development a conflict between water uses for the benefit of the Swinomish Indian Tribal Community or any of the members of the Swinomish Indian Tribal Community and non-Tribal projects or uses, the Swinomish Cultural and Environmental Protection Agency or the Director of the Office of Planning and Community Development may

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grant such preference as may be required by this Code and are in the best interests of the Swinomish Indian Tribal Community and its members.

2) In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threatens degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values, the Swinomish Cultural and Environmental Protection Agency or the Director of Planning and Community Development shall, in reaching their decision, carefully consider and weigh:

- a) The economic dislocation and hardship which will be imposed by such actions;
- b) The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;
- c) Any other burdens as may be imposed by such action;
- d) The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.

3) The Swinomish Cultural and Environmental Protection Agency or the Director of the Office of Planning and Community Development, when considering a proposed action, shall balance the adverse effects against the benefits to the Swinomish Indian Tribal Community and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects, and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible, to protect the water resources.

4) When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which they are listed:

- a) Domestic and Civic Uses
- b) Instream Needs, for Fish, Wildlife Conservation and Recreational Uses
- c) Economic Development Uses including Industrial and Power Uses
- d) Agricultural Uses
- e) Other Uses.

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#### Section 5.020 Guidelines for Making Most Effective Use of Available Resources

In addition to the policy guidelines contained in the previous section, the Swinomish Cultural and Environmental Protection Agency and the Director of the Office of Planning and Community Development shall take appropriate actions to:

- 1) Insure adequate water supplies;

- 2) Minimize water quality degradation and the adverse effects of water pollution whether from point sources or nonpoint sources;
- 3) Maintain water levels for diversion and withdrawal systems;
- 4) Maintain head and pressure in groundwaters;
- 5) Prevent or reduce obstruction of surface water flows;
- 6) Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply;
- 7) Create and enhance the efficiency of natural and artificial surface and underground storage;
- 8) Enhance natural and artificial recharge of aquifers;
- 9) Define and control interbasin transfers of both surface and groundwaters;
- 10) Provide for some degree of overdraft from aquifers when short-term recharge is not possible;
- 11) Minimize interference between competing users of water sources, whether above or below ground;
- 12) Minimize thermal degradation or the adverse effects of thermal degradation;
- 13) Minimize interaquifer communication;
- 14) Plan for long-term water development;
- 15) Penalize misuse;
- 16) Abate and prevent salt water intrusion and contamination of the groundwater resource.
- 17) Impose emergency conservation regulations in the event of water supply shortages.
- 1018) Impose water conservation practices and regulations to promote long term protection and use of the water resource.
- 19) Otherwise insure conformity with the policies and provisions of this Code.

#### Section 5.030 Additional Policy Guidelines

- a) Streams, ponds, wetlands and marine waters within the exterior boundaries of the Swinomish Indian Reservation are to be retained substantially in their natural conditions, with

the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.

b) Individuals, corporations, groups, associations and other entities shall be required to carry out best management practices of water and resource conservation and environmental protection as they relate to the use of waters within the exterior boundaries of the Swinomish Indian Reservation.

## ARTICLE VI

### DESCRIPTIONS OF USE AND APPLCIATIONS FOR PERMIT

#### Section 6.010 Existing Use Inventory

In order to determine existing uses of water within the exterior boundaries of the Swinomish Indian Reservation, the Office of Planning and Community Development shall cause an inventory of existing water uses to be made and completed within two (2) years following the effective date of this Code. The inventory shall be based upon the information contained in the Descriptions of Use.

#### Section 6.020 Description of Use - Required

All persons desiring to continue to operate existing uses must file a Description of Use, as required by this subchapter, within one year of the effective date of this Code. After such date, it shall be unlawful to continue to operate any use or to continue any other within the exterior boundaries of the Swinomish Indian Reservation which affects the waters therein except as authorized by this Article. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

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#### Section 6.030 Application for Permit - Required

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the exterior boundaries of the Swinomish Indian Tribal Community affecting the waters therein shall file an Application for Permit as required by this Article. After such date, it shall be unlawful for any person to make any new use or take any other action within the exterior boundaries of the Swinomish Indian Reservation affecting the waters therein except as authorized by this Code.

## Section 6.040 Description of Use and Application for Permit - Contents

Descriptions of Use and Applications for Permit shall be on forms provided by the Director of the Office of Planning and Community Development and shall include the following information:

- 1) The name and mailing address of the claimant;
  - 2) The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;
  - 3) The purpose or purposes for which water is or will be used;
  - 4) The quantity of water which is or will be used;
  - 5) A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;
  - 6) A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of groundwater withdrawals shall be by a Drilling Permit on a form approved by the Swinomish Cultural and Environmental Protection Agency;
  - 7) A description of how water is or will be applied or consumed, including the number of people and/or homes to be served if the water is for domestic or civic use; any proposed commercial or industrial uses; and acreage and crop if the water is for agricultural use.
  - 8) The locations and description of any wells, septic systems, or other water uses within 500 feet of the proposed diversion, withdrawal, or impoundment.
  - 9) The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;
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- 10) The estimated date on which the use or uses began or will be commenced;
  - li) If any preexisting use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;
  - 12) The water user's plan for future development of the water use or uses and related activities; and
  - 13) Any other information deemed necessary by the Swinomish Cultural and Environmental Protection Agency.



## Section 6.050 Interim Permits

A Description of Use which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Office of Planning and Community Development until a permit covering such uses is issued or until other action is taken under this Code.

## Section 6.060 Fees

Each Application for Permit shall be accompanied by a filing fee. Filing fees for identified uses shall be:

- Single Residential: \$100.
- Multi-Residential: \$50 per unit.
- Commercial/Industrial: \$250.

Provided, however, that the Director of the Office of Planning and Community Development may waive payment of such filing fee in cases of demonstrated financial hardship.

## Section 6.070 Public Notice of Descriptions of Use and Applications for Permit - Initial Notice

As soon as possible and no more than two years after the effective date of this Code, the Director of the Office of Planning and Community Development shall prepare:

- 1) A map of the Swinomish Indian Reservation;
- 2) A listing of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion,

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withdrawal or impoundment and descriptions of the uses to be made;

- 3) A statement that the applicants described in the listing have applied for permits under the Swinomish Indian Tribal Community Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;
- 4) A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;
- 5) A statement that any person may comment either orally or in writing on the issuance of

any permit; and

6) A brief description of the public comment and investigation sections of this chapter.

The map, listings, statements and descriptions prepared under the preceding paragraphs shall forthwith be published and posted in the same manner as provided in Article II Section 2.030 "Notice How Given", subject to the following exceptions: (a) maps and descriptions of objection procedures may be omitted if deemed impractical; and (b) newspaper publications may be limited to two notices within a one month period.

#### Section 6.080 Public Notice of Applications for Permit

When additional Applications for Permit are received during the course of the administration of this Code, the Director of the Office of Planning and Community Development shall, in conformance with the preceding section:

- 1) Include in the listing provided for in Section 6.070 2) the necessary information concerning the new use or action.
- 2) Prepare a statement that one or more new Applications for Permit have been made and objections may be made to them in accordance with Section 6.070 3).
- 3) Prepare the descriptions and statements provided in Sections 6.070 4), 6.070 5), and 6.070 6).
- 4) The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in Section 6.070, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

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#### Section 6.090 Objections Affecting Descriptions of Use and Applications for Permit

Any person or entity whose interests are or may be affected by a water use described and/or applied for may, within 30 days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

#### Section 6.100 Form and Contents of Objections

a) Objections may be made on forms prepared and made available by the Director of the Office of Planning and Community Development and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions

or other provisions which should be included in any permit granted.

b) Oral objections may be made to the Director of the Office of Planning and Community Development when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of the Office of Planning and Community Development.

#### Section 6.110 Reply by Applicant

Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

#### Section 6.120 Permit Hearings

Any applicant directly affected or any party objecting in accordance with this Article may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Office of Planning and Community Development or the Chairman of the Swinomish Cultural and Environmental Protection Agency may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed; Provided, that whenever possible, hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this subchapter, notice of such hearings shall be as provided for in Article X, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise provided

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for in this subchapter, hearings shall be conducted as provided for in Article X.

#### Section 6.130 Public Comment

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Swinomish Indian Tribal Community that all interested parties be given the opportunity to participate in the decision making process as set forth in this Code.

#### Section 6.140 Investigation and Review of Permit Issuance

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Office of Planning and Community Development may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and may otherwise gather information which will assist in making the decision to issue or deny a

permit in accordance with the provisions of this subchapter.

#### Section 6.150 Issuance or Denial of Permits

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than 90 days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Office of Planning and Community Development shall review the comments and information gathered with respect to a specific application and either deny a permit or issue a permit in the form provided for in Article VII.

### ARTICLE VII

#### WATER USE PERMITS

##### Section 7.010 Form

Water use permits issued in accordance with this Code shall be on a form approved by the Swinomish Cultural and Environmental Protection Agency.

##### Section 7.020 Information Contained

Each permit shall include:

- 1) The name and mailing address of the permittee:
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- 2) The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded;
  - 3) The quantity of water which will be used;
  - 4) The legal description, if such is readily available, or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
  - 5) A description of the method or methods of diversion, withdrawal or impoundment;
  - 6) The purpose or purposes for which water is or will be used;
  - 7) A description of how water may be applied or consumed, including the number of people and/or homes to be served if the water is for domestic or civic use, any proposed commercial or industrial uses, and acreage and crop if the water is for agricultural use.
  - 8) The locations and description of any wells, septic systems, or other water uses within 500 feet of the proposed water diversion, withdrawal, or impoundment.

9) The approximate date upon which the use or uses permitted began or will be commenced;  
and

10) Any other information as is deemed necessary and appropriate.

#### Section 7.030 Conditions

Each water use permit issued pursuant to this Code shall contain whatever conditions are necessary: to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

1) The source from which water may be diverted, withdrawn or impounded;

2) The quantity of water which may be diverted, withdrawn or impounded during any particular time;

3) The point or points of diversion, withdrawal or impoundment;

4) The method or methods of diversion, withdrawal or impoundment;

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5) The purposes for which water will be used;

6) The method of application;

7) The location and purpose of application, including acreage for crops and number of livestock for livestock watering;

8) The quantity and quality of return flow;

9) The time period during which water may be used;

10) Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;

11) Provisions for surface or groundwater storage of surplus flows;

12) Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;

13) Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Swinomish religious values;

14) Provisions for insuring minimum pumping and diversion levels with respect both to

surface and underground water;

- 15) Provisions designed to maintain head and pressure in groundwaters;
- 16) Provisions designed to prevent or reduce obstruction of surface water flows;
- 17) Provisions designed to minimize point and nonpoint source pollution, water quality degradation and thermal degradation;
- 18) Provisions designed to enhance recharge of aquifers;
- 19) Provisions designed to define and control interbasin transfers of surface and groundwaters;
- 20) Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;
- 21) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- 22) Provisions to minimize interaquifer communication;
- 23) Provisions to insure long-term water development;

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24) Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

#### Section 7.040 Entry on Land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he or she shall consent to reasonable entry upon his or her land by Swinomish Indian Tribal Community employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land.

#### Section 7.050 Effect

A water use permit issued under this Code constitutes nothing more than Swinomish Indian Tribal Community permission to use the water within the exterior boundaries of the Swinomish Indian Reservation subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water use permit issued hereunder shall be construed as creating

or recognizing any right other than Swinomish Indian Tribal Community permission to use water, nor shall any water use permit ripen into any interest other than such limited permission.

#### Section 7.060 Revocability

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Office of Planning and Community Development in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. S1301 et seq.

#### Section 7.070 Modification

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. S1301 et seq.

### ARTICLE VIII

#### DETERMINATION OF AVAILABILITY AND NEED

##### Section 8.010 When Proceeding May Be Initiated

The Director of the Office of Planning and Community Development may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this Article,

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whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made; or a complaint concerning an existing or proposed use, or other action affecting the water is made; or a request is made by the Swinomish Cultural and Environmental Protection Agency; and it appears probable to the Director of the Office of Planning and Community Development that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected.

##### Section 8.020 Purposes

The purposes of a proceeding to determine availability of and need for water under this Article shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and groundwater levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal, degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with policies and actions of the Swinomish Indian Tribal Community; and to make available to other Tribal, local, state and

federal agencies and to members of the public information concerning the waters in question.

#### Section 8.030 Notice of Proceeding

- a) Whenever a proceeding is initiated under Section 8.010 of this Article, the Director of the Office of Planning and Community Development shall provide notice of such proceeding in the same manner as provided in Section 10.020 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.
- b) Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as may be determined, the possible effects of such a proceeding on individual water uses.
- c) The Director of the Office of Planning and Community Development shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

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#### Section 8.040 Office of Planning and Community Development - Investigation Initiation

As soon as the Director of the Office of Planning and Community Development determines that a proceeding shall be initiated under this Article, he shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

#### Section 8.050 Office of Planning and Community Development - Information Gathering

The Director of the Office of Planning and Community Development shall initiate an investigation to gather and evaluate all available, pertinent data from whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations to assist the Swinomish Cultural and Environmental Protection Agency. Such information, alternatives, and recommendations shall be contained in the report of the Director of the Office of Planning and Community Development provided for in Section 8.060 of this Code.

#### Section 8.060 Office of Planning and Community Development - Report

Upon completion of the investigation provided for in Section 8.050 and no more than 90 days after the initiation of the investigation, the Director of the Office of Planning and Community Development shall transmit to the Swinomish Cultural and Environmental Protection Agency the report concerning the availability of and need for water in the particular area to which the



proceeding applies. The report shall include the following:

- 1) A geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;
- 2) A general description of the water supply in that area, from all sources;
- 3) A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;
- 4) A computation of the water supply available at particular times and places;
- 5) A description of present and proposed uses of and other actions affecting the water supply in question;
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- 6) A description and evaluation of the need for each such present or proposed use or other action;
- 7) A description of possible methods for increasing available water supply;
- 8) A description of economic and technical methods which may be implemented to increase the efficiency of use;
- 9) Alternatives for present uses which will minimize the impacts described in Section 5.010 of this Code.
- 10) Amounts of water within the particular supply which shall be subject to a reserve as provided in Section 3.030 of this Code;
- 11) Proposals for assessing varying amounts of water as provided for in Section 3.040 of this Code; and
- 12) Any additional information and recommendations which the Director of the Office of Planning and Community Development deems is necessary for inclusion.

#### Section 8.070 Proposed Determination of Availability and Need

As soon as possible and no more than 30 days after receipt of the report of the Director of the Office of Planning and Community Development, the Swinomish Cultural and Environmental Protection Agency shall cause to be prepared a proposed Determination of Availability and Need in accordance with the provisions of this Article.

#### Section 8.080 Determination of Availability and Need - Contents

A Determination of Availability and Need may include the following, either as recommendations or mandatory provisions:

- 1) A description and map of the affected area;
- 2) A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proposed water uses within that area;
- 3) A description of the various present and future needs for using or affecting the water supply in the area;
- 4) A list of priorities to be observed within the affected area;
- 5) A list of storage methods which are or may be proposed and implemented;
- 6) A description of methods for increasing efficiency;
- 7) A description of possible interbasin transfers; and
- 8) Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

#### Section 8.090 Notice of Hearing

As soon as possible and no more than 30 days after the drafting of a proposed Determination of Availability and Need, the Director of the Office of Planning and Community Development shall provide notice, in the manner provided for in Section 8.030, of a public hearing at which interested persons may present oral or written comments concerning the proposed Determination of Availability and Need. Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed Determination of Availability and Need shall be made reasonably available to interested persons. The notice shall state the date, time and place for a hearing, to be held not less than 30 nor more than 60 days after the date notice is completed.

#### Section 8.100 Hearing

A hearing shall be held with respect to every proposed Determination of Availability and Need. Whenever possible, such hearings shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Swinomish Cultural and Environmental Protection Agency or its designees shall provide a brief oral statement of the purpose of the hearing and a description of the proceeding to date, including the proposed Determination. At least one member of the Swinomish Cultural and Environmental Protection Agency shall be present and shall preside over the hearing. After the presentation is

made by the Swinomish Cultural and Environmental Protection Agency or its designees, public comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Swinomish Cultural and Environmental Protection Agency to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

#### Section 8.110 Final Determination of Availability and Need

As soon as possible and no more than 60 days after the public hearing provided for in Section 8.100, the Swinomish Cultural and Environmental Protection Agency shall cause to be prepared a final Determination of Availability and Need. Notice of this final Determination shall be made in the same manner as provided

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for in Section 8.030 and shall indicate that copies of the Determination are reasonably available for public review.

#### Section 8.120 Subsequent Action

Upon completion of the above proceedings, the Director of the Office of Planning and Community Development shall make copies of the Determination of Availability and Need made under the provisions of this Article reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such Determination; shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the Determination and of the policies, provisions and guidelines set forth in this Code.

#### Section 8.130 Appeal

Appeals from the final Determination of the Availability and Need shall be taken in the same manner as provided for in Article XI of this Code.

### ARTICLE IX

#### TRANSFER AND LOSS OF RIGHTS

##### Section 9.010 Transfer, Assignment, Descent, Distribution and Creation of Security Interest

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Office of Planning and Community Development. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Office of Planning and Community Development. Such forms shall be designed

to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of Article VI, governing Descriptions of Use and Applications for Permit. Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

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#### Section 9.020 Loss by Nonuse

Any right to use or otherwise affect in any way water within the exterior boundaries of the Swinomish Indian Reservation, regardless of its origin, shall become void and revert, to the extent of the abandonment or nonuse, to the Swinomish Indian Tribal Community when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five consecutive years.

"Sufficient cause" shall include:

- 1) Drought or other unavailability of water;
- 2) Active service in the armed forces of the United States;
- 3) The operation of legal proceedings;
- 4) The application of any laws restricting water use;
- 5) Incarceration in a penal institution;
- 6) Confinement in a mental institution, whether voluntary or involuntary;
- 7) Incompetence by reason of age or mental incapacity;
- 8) Provisions for future use as provided in this Code; or
- 9) Other causes of nonuse beyond the control of the holder or holders of the use right claimed.

Before such rights to use water may be deemed lost by nonuse or abandonment, the Director of the Office of Planning and Community Development shall serve notice on the holders of such

use rights to appear at a hearing to be held before the Swinomish Cultural and Environmental Protection Agency not less than 30 days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Article X of this Code governing notice and hearing.

#### Section 9.030 Loss by Adverse Possession, Prescription, Estoppel, or Acquiescence

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel or acquiescence.

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#### Section 9.040 Outside Proceedings

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Civil Rights Act, 25 U.S.C. S1301 et seq.

### ARTICLE X

#### GENERAL HEARING PROVISIONS

##### Section 10.010 Applicability

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Article.

##### Section 10.020 Notice

All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this Article. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearings shall be posted in prominent places in the affected area, as set forth in Article II of this Code.

Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and adequate opportunity to be heard.

##### Section 10.030 Time and Place of Hearing

Whenever possible hearings shall be held in the affected area, at a date, time and place which is convenient for a major portion of the parties affected.

##### Section 10.040 Continuances

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

#### Section 10.050 Presiding Officer

The Swinomish Cultural and Environmental Protection Agency shall designate a qualified and impartial hearing officer to preside over hearings provided for in this Article.

#### Section 10.060 Forms of Evidence

Evidence may be submitted in any practical form including oral testimony, written evidence, and descriptive evidence. The

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ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

#### Section 10.070 Consolidation of Hearings

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

#### Section 10.080 Recording

Hearings shall be recorded by mechanical means, provided, that any person may provide at his own expense for a stenographic record.

#### Section 10.090 Decision

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Office of Planning and Community Development. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within thirty days of such recommendation. Such decision shall be published and served upon the parties in the same manner as provided in Section 10.020 governing notice of hearings.

### ARTICLE XI

#### APPEALS

#### Section 11.010 Appeals Provided For

There shall be no appeal from actions taken under this Code except as provided here. Appeals shall be to the Swinomish Tribal Court.

#### Section 11.020 Notice of Appeal - Jurisdiction

Any party aggrieved by any final action taken under this Code may, by filing a Notice of Appeal with the Swinomish Tribal Court, obtain review of such final action. The Swinomish Tribal Court shall have no jurisdiction to hear any appeal initiated pursuant to this Article unless the Notice of Appeal is filed with the Swinomish Tribal Court within 30 days after the date of the final action. "Final action" means any action taken under

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this Code for which no further consideration by the Director of the Office of Planning and Community Development or the Swinomish Cultural and Environmental Protection Agency is required.

#### Section 11.030 Notice of Appeal - Service

Upon filing of the Notice of Appeal, the party appealing the final action shall forthwith, and not more than 10 days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, on the Director of the Office of Planning and Community Development, and on the Chairman of the Swinomish Cultural and Environmental Protection Agency.

#### Section 11.040 Transmittal of Record

a) Upon receipt of the Notice of Appeal, the Director of the Office of Planning and Community Development and the Chairman of the Swinomish Cultural and Environmental Protection Agency shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Swinomish Tribal Court.

b) Any party to an appeal may, at his own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Swinomish Tribal Court. Provided, that the Director of the Office of Planning and Community Development in his discretion shall bear the final financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

#### Section 11.050 Oral Argument

Upon receipt of the Notice of Appeal, the Swinomish Tribal Court shall, as soon as possible and no more than 15 days after receipt thereof, notify the Swinomish Cultural and Environmental Protection Agency, the Director of the Office of Planning and Community Development, the appealing party, and the other parties to the proceedings, of a date certain for a hearing before the Swinomish Tribal Court.

#### Section 11.060 Briefs

Parties may at their own option or shall when requested to do so by the Swinomish Tribal Court file briefs in support of their appeal. Briefs shall be due on dates set by the Swinomish Tribal Court and no less than 30 days after receipt of the notice provided for in Section 11.050.

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#### Section 11.070 Scope of Review - On the Record Below

The Swinomish Tribal Court, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Office of Planning and Community Development or the Swinomish Cultural and Environmental Protection Agency at the time of the final action appealed from. The Swinomish Tribal Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious, unsupported by substantial evidence, not in substantial conformity with this Code or otherwise contrary to the laws of the Swinomish Indian Tribal Community.

#### Section 11.080 Tribal Court - Additional Powers

- a) The Swinomish Tribal Court may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.
- b) In addition, the Swinomish Tribal Court may stay the operation of final actions appealed from in whole or in part, and may, when the ends of justice require, provide for a bond or other security from the parties to the appeal.

## ARTICLE XII

### DEFINITIONS

#### Section 12.010 Best Management Practices

"Best Management Practices" or "BMPs" means the proper scheduling of activities, prohibitions of known adverse actions, use of proven operation and maintenance procedures, and application of other residential, commercial, industrial, agricultural and silvicultural land use and management practices designed to prevent or reduce pollution of surface, ground, and marine waters of the Reservation. These practices must conform to the guidelines for the use of resources listed under Section 5.020 of this Code.

#### Section 12.020 Director of the Office of Planning and Community Development

Director of the Office of Planning and Community Development means the executive director of the Office of Planning and Community Development of the Swinomish Indian Tribal Community, his designated representative or agent, or his successor in responsibility, as



determined by the Chairman of the Swinomish Indian Senate.

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#### Section 12.030 Domestic Use

"Domestic use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking or sanitation.

#### Section 12.040 Effective Date

The "effective date" referred to herein shall be the date of the resolution of the Swinomish Indian Senate approving adoption of this Code.

#### Section 12.050 Civic Use

"Civic use" means all reasonable water uses necessary in carrying out the functions of Tribal government.

#### Section 12.060 Person

"Person" includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether Tribal, local, state or federal.

### ARTICLE XIII

#### PROHIBITED ACTS

##### Section 13.010 Waste of Water Prohibited

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

##### Section 13.020 Unauthorized Actions Affecting Waters Prohibited

Whenever any use or other action affecting the use of waters within the exterior boundaries of the Swinomish Indian Reservation is required by this Code to be authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

Section 13.030 Obstruction of Swinomish Indian Tribal Community Employees

The willful obstruction of or interference with Swinomish Indian Tribal Community employees performing their lawful duties under this Code shall be a violation of this Code.

Section 13.040 Misstatement of Material Facts

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to Descriptions of Use and Applications for Permit or otherwise, shall be a violation of this Code.

Section 13.050 Sanctions for Code Violations

Violations of any provision of this Code may subject the person(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions taken, including the replacement of lost water; payment of associated administrative costs incurred by the Swinomish Indian Tribal Community as a result of the violation; and payment of such other costs as are necessary to render the Swinomish Indian Tribal Community and its inhabitants whole. Sanctions shall be imposed by the Director of the Office of Planning and Community Development subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. §1301 et seq.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 14.010 Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid provision or application; and to this end the provisions of this Code are declared to be severable.

Section 14.020 Repealer

This Code supersedes and replaces all previous water ordinances and codes of the Swinomish Indian Tribal Community.

Section 14.030 Construction

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes and provisions.

Section 14.040 Review of Authority

The Swinomish Cultural and Environmental Protection Agency and the Director of the Office of Planning and Community Development shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Swinomish Indian Senate in order to improve administration under this Code.

Section 14.050 Extension of Time Limits

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

Section 14.060 Representation

Parties appearing at hearings and other proceedings provided for by this Code may represent themselves or may be represented by individuals licensed to practice before the Courts of the Swinomish Indian Tribal Community if they so desire.

Robert Joe, Sr., Chairman  
Swinomish Indian Senate

CERTIFICATION

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing Ordinance was approved at a Special Meeting of the Swinomish Indian Senate held on 7/19, 1990, at which time a quorum was present and the resolution was passed by a vote of 5 FOR, 0 AGAINST, and 0 ABSTENTIONS.

Liddie Grossglass, Secretary  
Swinomish Indian Senate

AJK/H2O-CODE  
7/18/90