



SHIVWITS BAND OF PAIUTE INDIANS

LAND USE ORDINANCE

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**SHIWITS BAND OF PAIUTE INDIANS
LAND USE ORDINANCE**

ARTICLE 1: TITLE, PURPOSE, AND SCOPE

A. TITLE

This Ordinance shall be known and may be cited as the “Land Use Ordinance of the Shivwits Band of Paiutes” or the “Land Use Ordinance.”

B. AUTHORITY

This Ordinance is promulgated pursuant to the inherent sovereign authority of the Shivwits Band of Paiutes, and Article XII, Section 3 of the Bylaws of the Shivwits Band of Southern Paiutes; and Article VIII, Sections 2(c), 2(d), and 2(j) of the Constitution of the Paiute Indian Tribe of Utah; and the Paiute Restoration Act, Public Law 96-227 94 Stat. 317, and the Indian Reorganization Act, 25 U.S.C. 461 *et seq.*, and, Shivwits Band Council Resolution 2022-***.

C. EFFECTIVE DATE

This Ordinance shall take effect upon adoption by the Shivwits Band Council, evidenced by the Council passing the applicable resolution.

D. FINDINGS

The Shivwits Band Council hereby finds as follows:

1. The Shivwits Band Reservation was set aside for the absolute and undisturbed use and occupation of the Shivwits Band, as a home in perpetuity for the members of the Shivwits Band.
2. The control and use of all lands and natural resources on the Reservation are directly connected to the ability of the Shivwits Band to protect the peace, safety, health, morals, and general welfare of all residents of the Reservation, and the political integrity and economic security of the Shivwits Band;
3. The preservation of the Reservation land base is the lifeblood of the Shivwits Band; and,
4. Shivwits Band members have a deeply-rooted traditional and cultural connection with the land that is so integrally related to the members’ well-being and overall morale that any infringement on the Band’s ability to control the use of lands and natural resources on the Reservation directly imperils the political integrity, the economic security, and health or welfare of the Shivwits Band.

E. POLICY

It is the policy of the Shivwits Band to:

1. Preserve all Reservation lands for the absolute and undisturbed use and occupation of the Shivwits Band, as a home in perpetuity for the members of the Shivwits Band;
2. Control and regulate the use of all lands and natural resources on the Reservation in a manner that protects the peace, safety, health, morals, and general welfare of all residents of the Reservation, and the political integrity and economic security of the Shivwits Band; and,
3. Preserve, promote, and protect the character of the Shivwits Band Reservation by balancing the preservation of the traditional character of the Reservation with the current and future interests of the Shivwits Band.

F. PURPOSES

The purposes of the Land Use Ordinance are to:

1. Protect the political integrity of the Shivwits Band;
2. Protect the economic security of the Shivwits Band;
3. Protect the peace, health, safety, morals, and general welfare of the inhabitants of the Shivwits Band Reservation;
4. Preserve the character of the Shivwits Band Reservation by balancing the preservation of the traditional character of the Reservation with the current and future interests of the Shivwits Band;
5. Conserve Band property and protect the natural resources found on the Reservation;
6. Develop Band resources;
7. Provide for clean air and water, open space, and a quality environment;
8. Maintain the percentage of Band and trust land on the Reservation;
9. Preserve and protect the customs, traditions, culture, and way of life of the Shivwits Band;
10. Reduce non-conforming and conflicting land uses; and,
11. Promote orderly economic growth of the Shivwits Band.

G. INTERPRETATION

All provisions of the Land Use Ordinance shall be interpreted and applied in a manner that is consistent with the foregoing Findings, Policy, and Purposes.

H. SCOPE

1. The Land Use Ordinance shall apply to all lands and natural resources within the exterior boundaries of the Shivwits Band Reservation.
 - a. This Ordinance applies to all such lands and natural resources, regardless of who owns the land or natural resource, or how they may be owned, including but not limited to all trust and restricted status lands, all allotted lands, all assigned lands, and all lands owned in fee-simple or any other status or estate, whether owned by the Tribe, Band members, non-Indians, or non-members of the Shivwits Band.
2. The Land Use Ordinance also applies, except as may be controverted by federal law, to all lands and natural resources owned by the Shivwits Band outside the exterior boundaries of the Shivwits Band Reservation. All land and natural resources acquired by the Shivwits Band off the Shivwits Band Reservation shall be used in a manner consistent with the Policy and Purpose of this Ordinance.

I. REPEAL

Any resolution or ordinance which conflicts in any way with provisions of this Ordinance is hereby repealed to the extent it is inconsistent with, conflicts with, or is contrary to the purpose of this Ordinance.

J. SEVERABILITY

This Ordinance and the various parts, sections and clauses are hereby declared to be severable. If any part, section, article, paragraph, sentence, clause or phrase is adjudged to be unconstitutional or invalid, it is hereby declared that the remainder of the Ordinance shall not be affected thereby.

K. RESPONSIBILITY OF THIRD PARTIES

It shall be the duty of all planners, architects, builders, contractors, subcontractors, and other Persons having to do with any use of land or natural resource, or the construction of buildings and structures subject to this Ordinance to see that a proper permit has been granted before such use or construction is commenced.

L. LEGAL ACTION

In case any building or structure is erected, constructed or used, or any land or natural resource subject to this Ordinance is used, in violation of any provision of this Ordinance, the Shivwits Band, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or

proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use. Notwithstanding this, or any other provision herein, the Shivwits Band does not waive sovereign immunity.

M. SOVEREIGN IMMUNITY

Nothing in this Land Use Ordinance, including any action initiated or pursuant to this Ordinance by the Shivwits Band, shall be deemed or interpreted as a waiver of the sovereign immunity of the Shivwits Band, any political subdivision of the Band, its officers, or employees. Nothing in this Ordinance shall be deemed as authorizing a suit for damages against the Band. Nothing herein shall be interpreted as waiving the Band's immunity or empowering the Land Use Commissioner or other Band employees to waive the Band's immunity from suit.

N. AMENDMENTS

Any amendments to this Ordinance shall first be approved by the Shivwits Band Council through a Band Council Resolution.

O. LIABILITY

The Band shall not be liable for any injuries or damages of any kind sustained by individuals entering upon Tribal or Reservation lands.

ARTICLE 2: DEFINITIONS

A. The following terms, whenever used or referred to in this Article, shall have the following meanings, unless a difference meaning clearly appears from the context:

"Accessory Buildings" are herein defined as a subordinate building, the use of which is incidental to that of a dwelling and which would commonly be associated with the establishment of the yards surrounding a dwelling, such as barns, corrals, granaries, shop, sheds, etc.

"Agricultural" shall mean the tilling of soil, the raising of crops, horticulture, gardening, the keeping, raising and grazing of domestic animals or fowl, but does not include any agricultural industry or business such as agricultural processing plants.

"Band Council" shall mean the Band Council of the Shivwits Band.

"Building" shall mean any structure permanent or temporary with walls and roof affixed to the land built for the support, shelter or enclosure of persons, animals, or chattels.

"Commercial" shall mean any use, business, or commerce related activity, including

building, relating to the purchase, sale, exchange, or other transaction involving the wholesale or retail distribution of goods and services.

“Closed area” means all Band-owned land or land held in trust for the Shivwits Band or any Tribal member. In addition to other areas defined by this Ordinance as closed, all ceremonial sites are closed. Non-Indians and non-member Indians may not enter upon any closed areas of the Reservation unless they obtain a trespass permit from the Band Council or Land Use Commissioner or are otherwise exempt from the provisions of this Ordinance.

“Cultural” shall mean any act that has a connection to the customs, traditions, shared knowledge, values, or ways of living of the Shivwits Band people, including the ceremonies, family gatherings, customs, traditions, spiritual practices, or distinctive ways of life of the Shivwits Band.

“Cultural Resource” shall mean any object of cultural patrimony, sacred object, funerary object, cultural artifact, shrine, pot shard, cultural item, and confidential cultural or religious traditions not intended for observation by the general public or non-Native Americans.

“Development” shall mean the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings; any use or change in use of any buildings or land; any extension of any use of land or any clearing, grading, or other movement of land, for which a permit may be required pursuant to this Ordinance.

“Dwelling” or **“Dwelling Unit”** shall mean any building or trailer which is used for residential purposes, but does not include a hotel, motel, tourist court, boarding or rooming house, rest home, or trailer court.

“Enforcement Authorities” shall mean the Tax Commission of the Shivwits Band, the Washington County Sheriff’s office, and any other person or entity to whom the authority to administer and enforce this Ordinance shall have been delegated by the Band Council.

“Fireworks” shall mean any device containing combustible or explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any firearms.

“Fireworks Stand” shall mean any location at which fireworks are offered for retail sale.

“Hotel, Motel, Inn” shall mean a building or group of buildings located upon the same tract or parcel of land intended to provide lodging to travelers and others on a short-term basis for compensation.

“Industrial” shall mean any use of land, including any related building, structure, or activity involving the manufacturing or mechanized processing of any goods or materials for commercial purposes, including but not limited to the warehousing and

agricultural industry.

“Law Enforcement Officer” shall mean any officer duly authorized or commissioned by the authority of the Shivwits Band to enforce regulations of Shivwits Band policies, ordinances, and other applicable documents and law.

“Lease” shall mean any lease of Tribal lands to any person or entity by the Shivwits Band of Paiutes duly approved by the Secretary of the Interior or the Secretary’s authorized representative under applicable federal law and regulations.

“License” shall mean authorization issued by the Shivwits Band under this Ordinance, through the Tax Commission, to engage in the transport, possession, discharge, or retail and/or wholesale sale of authorized firework. A license is personal to the licensee and is not transferrable.

“Licensee” shall mean person to whom license has been issued under this

“Natural Resources” shall mean materials or substances such as minerals, forests, water, and fertile land that occur in nature and can be used for economic gain.

“Non-Conforming Use” shall mean such use that does not conform to the Zoning Regulations.

“Person” shall mean an association, firm, co-partnership, corporation, government or government entity.

“Renewable Energy” shall mean energy that is generated from natural resources such as sunlight, rain, wind, and geothermal heat which is naturally replenished.

“Reservation” shall mean the Shivwits Band Reservation and includes: (i) all lands, the title to which is held in trust by the United States for the benefit of the Shivwits Band or any individual member; and, (ii) all lands within the exterior boundaries of the Shivwits Band Reservation, including all fee land within the boundaries of the Shivwits Band Reservation, and any rights-of-way on the Reservation; (iii) such other lands outside the boundaries of the Shivwits Band Reservation in which the Shivwits Band have a reversionary interest, or as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Band; and, (iv) all Band lands.

“Residential” shall mean the use of an area comprised primarily of structures to provide living accommodations for persona and as a dwelling unit.

“Right-of-Way” or “Easement” shall mean the right to use Tribal land pursuant to the consent of the Band Council and a valid grant of right-of-way or easement.

“Shivwits Land” shall mean any land subject to the jurisdiction of the Shivwits Band of Paiutes, including land held by the United States in trust for Shivwits Band members and land within the exterior boundaries of the Shivwits Reservation, and includes the airspace above such land as applicable and the water, plant, animal, or mineral

resources located on or under the surface of the land.

“Structure” shall mean anything constructed or located, which requires permanent location above, or below the ground or attached to something having a location on the ground, including but not limited to buildings, bridges, culvert across streams, signs, fences, billboards, basketball and tennis courts, swimming pools, satellite dishes, antennas, yard lights, and walls used as fences if six feet in height or more.

“Subdivision” shall mean the dividing of a tract of real property into parcels of less than 10 acres for the purposes of placing a dwelling unit on each parcel.

“Trailer” shall mean a vehicle portable dwelling, building or structure which is thirty (30) feet or less in length and eight (8) feet or less in width and which is designed as a temporary dwelling for travel, recreational or vacation uses.

“Trailer Coach” or **“Mobile Home”** shall mean any vehicle used or so constructed to permit its being used as a conveyance upon the public streets or highways and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more Persons.

“Trailer Coach Park” shall mean any plot of ground upon the Shivwits Band Reservation which is prepared and developed and managed specifically for occupancy by more than one trailer coach, or mobile home to be occupied for dwelling purposes and located regardless of whether or not a charge is made for such accommodations.

“Trespass” shall mean, but not be limited to:

- (1) Entering upon, crossing, occupying, or using Shivwits Land or Closed Area for any purpose whatsoever without the prior consent of the Band Council; or, if applicable, by disobedience of an exclusion order of the Shivwits Band Council; or
- (2) Operating on or using property located on an expired, cancelled, or invalid right-of-way, easement or lease, which includes holding over on, failing to vacate, or failing to cease the use of Shivwits Land, a right-of-way, easement, or lease and any improvements thereon, after the expiration or cancellation or invalidation of a lease, right-of-way or easement; or
- (3) Entering Shivwits Land, causing an object to enter Shivwits Land, or removing anything attached to Shivwits Land for any unauthorized purpose including, but not limited to, hunting, trapping, fishing, poaching, timber harvesting, searching, foraging, grazing, mining, prospecting, driving, flying, recreating, drone operation, or any other means of transportation, including on land or roads not open to the general public.
- (4) Damaging, destroying, defacing, or removing any Band property or private property located on Shivwits Land, including posted signs, buildings, equipment, or any other object.
- (5) Viewing or recording by any means confidential cultural, religious, or traditional activity that is not open to non-Native American or the general public, or observing or recording by any means another individual in a place where the

individual has a reasonable expectation of privacy.

“**Zone**” shall mean a geographical area or district within the Reservation that is primarily designated for a particular type of use, and for which regulations are codified, as shown on the Official Zoning Maps of the Shivwits Band Reservation.

ARTICLE 3: LAND USE ZONES AND ZONING MAPS

A. LAND USE ZONES—ESTABLISHMENT

In order to accomplish the purposes of the Land Use Ordinance, the Reservation is hereby divided into Land Use Zones. Land Use Zones define the areas, boundaries, and classification of permissible uses of land and natural resources. The entire Reservation and all other Band land shall be designated by the Land Use Commission as a part of the Land Use Zones described in Section B of Article 3.

B. LAND USE ZONES—DESCRIPTION

1. Agricultural Zone – Agricultural Zone means the area where farming, tilling, raising crops, horticulture, gardening, composting, keeping, raising or grazing livestock, domestic animals and fowl, and similar uses may be permitted by the Land Use Commissioner. Agricultural processing plants, packing plants, farm equipment sales, or similar industrial uses are not Agricultural, and do not fall within the scope of allowable uses in an Agricultural Zone.
 - a. Any person using land within an Agricultural Zone for commercial farming purposes shall obtain a Farming Permit from the Land Use Commissioner prior to conducting any farming activity, the cost of which shall be set by the Commissioner. Every person participating in commercial farming activity shall follow good farming and conservation practices which are consistent with the Findings, Policy, and Purposes of this Ordinance.
2. Cemetery Zone – Cemetery Zone means the area where the Land Use Commissioner may permit the burial of the dead including traditional or cultural ceremonial columbariums, crematoriums, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of a cemetery. The Band may use the above-referenced facilities in designated land use zones, and such activities are not commercial or industrial in nature because they are an expression of religious, traditional, and/or cultural burial practices.
3. Ceremonial Zone – Ceremonial Zone means a specific area dedicated for Band members to perform or participate in traditional events, activities, or customs to celebrate, commemorate, or express the Shivwits Band culture.
4. Commercial Zone – means the area where the Land Use Commissioner may permit business or commerce related activity, including building, relating to the purchase, sale, exchange or other transaction involving the wholesale or retail distribution of goods and services. No person, except for the Shivwits Band, shall

use land or natural resources in a Commercial Zone for any purpose, unless such person has first obtained a permit from the Land Use Commissioner. Agricultural learning centers, hoop houses, high tunnels and greenhouses may be constructed in Commercial Zones. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commissioner.

5. Cultural Zone – Cultural Zone means a general area where Band members may participate in ceremonies, family gatherings, customs, traditions, spiritual practices, or distinctive ways of life of the Shivwits Band. No person, except for enrolled members of the Shivwits Band, shall use land or natural resources in a Cultural Land Use Zone for any purpose, unless such person has first obtained a permit from the Land Use Commissioner.
6. Industrial Zone – Land designated as part of an Industrial Zone may be used for industrial uses, including but not limited to the manufacturing or mechanized processing of any goods or materials for commercial purposes, warehousing, and agricultural industry purposes. No person shall use land or natural resources in an Industrial Zone for any industrial purpose, unless specifically permitted by the Land Use Commissioner. Land or natural resources in an Industrial Land Use Zone may be used for any lawful and less intensive purpose subject to the appropriate permit from the Land Use Commissioner, and to such conditions as the Commissioner may set upon that permit. Renewable Energy is a permissible use within this zone, but the Renewable Energy Use must be permitted by the Land Use Commissioner.
7. Institutional/Public Facilities Zone – Land designated as part of an Institution/Public Facilities Zone shall be used for Band government, educational, or public service facilities purposes, including Band administrative, court, other Band government offices, parking lots associated therewith, or a Band gymnasium, library, museum, or other public facility, and associated parking lots. No person, except Shivwits Band Government, shall use land or natural resources in an Institution/Public Facilities Land Use Zone for any purpose, unless such person has first obtained a permit from the Land Use Commissioner.
8. Open Space Zone – Open Space Zone means an area of mostly unimproved lands on which a significant portion of the natural vegetation is native grasses, grass-like plants, forbs, and shrubs or green space where the Land use Commissioner may permit grazing, hunting, or recreational shooting. Designation of an area as ‘open’ or ‘open space’ does not mean that it is open for jurisdictional purposes as the term ‘open’ is defined in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).
9. Residential Zone – Land designated as part of a Residential Zone shall be used for Residential purposes as defined in Article 2.
 - a. Subdivisions: That from the date of this Ordinance, no Person shall subdivide any tract of land within the Shivwits Band Reservation, unless such Person shall have first obtained a permit for such subdivisions.

- b. Trailer Park: That from the date of this Ordinance, no Person shall construct or establish or cause to be constructed or established a trailer park within the Shivwits Band Reservation, unless such Person shall have first obtained a permit for such Trailer Park.

C. ZONING MAPS

The Land Use Zones are set forth in Official Zoning Maps, available from the Land Use Commissioner. The Land Use Commissioner shall adopt and may from time to time amend the Official Zoning Maps with approval from the Shivwits Band Council. The adopted Official Zoning Maps are, by this reference, incorporated into and made part of the Land Use Ordinance.

D. LAND USE ZONE AMENDMENTS

Land use zone amendments may be made through application to the Land Use Commissioner. The Land Use Commission shall recommend amendments to the Shivwits Band Council. The Shivwits Band Council shall determine whether and how to amend Land Use Zones.

E. PERMISSIBLE USES AMENDMENTS

Permissible use amendments may be made through application to the Land Use Commissioner, pursuant to this Ordinance.

ARTICLE 4: PERMITS

A. GENERAL PERMIT REQUIREMENT

No person having a legal or equitable interest in any real property or natural resource may use or allow the use of any land or natural resources contrary to the provisions of this Land Use Ordinance or shall cause or permit the construction of any structure (underground or otherwise), contrary to the Provisions of this Ordinance, except as expressly exempted or allowed by this Ordinance or duly permitted by the Land Use Commissioner.

1. Cultural and Ceremonial Use Exception: Enrolled members of the Shivwits Band do not need a permit to conduct or participate in ceremonies or cultural activities.

B. CONSISTENT USE REQUIREMENT

Every use of land or natural resources must be consistent with the Findings, Policy, and Purpose of this Ordinance, and in keeping with the designated Land Use Zones.

C. PERMITTING PROCESS

1. The Land Use Commissioner shall administer the permit application process, but

may delegate its administrative duties under this Article.

2. The Land Use Commissioner may promulgate regulations governing the details of the permit application process to implement and administer the following general permit application requirements:

- a. Application Process:

- i. All applications to use land or natural resources subject to this Ordinance shall be made to the Land Use Commissioner. The applicant of the land or natural resource shall obtain an application for the appropriate permit from the Land Use Commissioner. The applicant shall complete the application, verify the truth and accuracy of the content with their signature, and submit the completed application to the Land Use Commissioner. The applicant shall comply with any requests from the Land Use Commissioner regarding additional information, meetings, and hearings.

- b. Pre-application conference:

- i. Prior to issuing an application, the Land Use Commissioner shall hold a pre-application conference with the applicant. The purpose of the pre-application conference is for the Land Use Commissioner to assist the applicant in determining what permit(s) the applicant may need. The Land Use Commissioner is able to provide information about the permits available and the applicable processes under Band laws. The applicant can obtain independent advice, however, and shall not rely on the information provided as legal advice. The Land Use Commissioner shall hold a pre-application conference with the applicant within fourteen (14) days of the applicant's request for a permit or application.

- c. Application content:

- i. Form. An owner of real property or natural resource or any one or more of multiple owners of such real property or natural resource who are required by the terms of this Ordinance to acquire a permit, shall apply to the Land Use Commissioner. Such application shall contain the following information:
 - a) The name and address of the applicant and of all other owners of an interest in said real property or natural resource;
 - b) A description of the location;
 - c) A concise factual description of the applicant's property interest in said real property or natural resource;
 - d) A concise factual description of the proposed activity to be undertaken with regard to the land or natural resources, including construction, deconstruction, or other activity, and identification of the nature of the

use/use zone described in Article 3; and,

- e) A signed statement by the applicant that the applicant has obtained all underlying permits and satisfied related requirements of any other applicable Band, federal, or state law or regulations.
- f) Complete application. If any application is incomplete, inaccurate, false, or fails to fully describe the proposed activity it may be denied.

d. Filing:

- i. Every application shall be filed with the Land Use Commissioner. The application shall be accompanied by a fee set according to a fee schedule implemented by the Land Use Commissioner. Fees are to be made payable to the “Shivwits Band of Paiutes.”

e. Receipt of application:

- i. No application may be received by the Land Use Commissioner unless it is complete. No application may be received by the Land Use Commissioner until it has been reviewed and approved by the Land Use Commissioner as a complete application, at which time the Land Use Commissioner will stamp the application as “received.”

f. Initial review procedure:

- i. Within thirty (30) days of receiving an application, the Land Use Commissioner shall commence the following initial review procedure:
 - a) Underlying permits. The Land Use Commissioner shall first determine what, if any Tribal procedures and underlying permits may be required for the proposed activity;
 - b) Routing. The Land Use Commissioner shall route the application to the Band department(s), federal agency, or state agency in charge of issuing any underlying permit;
 - c) Environmental Review. The Land Use Commissioner may request any environmental review, assessment, or impact statement it deems relevant. Any environmental review may be at the expense of the applicant;
 - d) Departmental Review. The Land Use Commissioner may request the review and recommendation of any Band department on any application; and,
 - e) Hearing. The Land Use Commissioner shall determine whether a hearing on the application is appropriate.

- i. Once the Commissioner has completed the initial review procedure, it shall inform the applicant about the status of the application.
 - ii. The time for the Commission to address the application begins to run once the initial review procedure has been completed.
- g. Hearing determination:
- i. A hearing determination shall be made on every application as part of the initial review procedure. Whether a hearing is granted on any application is a decision within the Land Use Commissioner's sole discretion. Factors to be considered by the Land Use Commissioner in making a hearing determination include, but are not limited to:
 - a) Whether a hearing was requested by the applicant;
 - b) Whether a hearing will aid in producing or clarifying related facts;
 - c) Whether significant policy questions related to the application exist for which public comment would be informative; and,
 - d) Whether holding a hearing will further the efficient administration of due process and justice in light of the purposes of the Land Use Ordinance.
- h. Hearing:
- i. If the Land Use Commissioner determines that a hearing or hearings will be granted, the Commissioner shall fix a time and place for the hearing(s) and provide notice of such hearings to the Band attorney's office, the Band Secretary, Band Council Members and to such other persons as the Commissioner may deem necessary. Such notice shall be given not less than ten (10) days prior to the hearing(s) scheduled. Such hearing(s), as the Commissioner may deem appropriate, shall be conducted as scheduled with all persons present being given the opportunity to express their positions on the application or matter before the Commission. Such hearings shall be open to the public and shall proceed according to procedures established by the Commissioner. A hearing may be conducted in-person, virtual, or hybrid.

ARTICLE 5: ADMINISTRATION

A. LAND USE COMMISSIONER

1. Establishment. There is hereby established a Land Use Commissioner.
2. Delegation of Authority. By this Ordinance and pursuant to the Bylaws of the Shivwits Band of Paiutes, the Shivwits Band Council delegates to the Land Use Commissioner the authority necessary to carry out the purposes of this Ordinance

but reserves the right to review any action taken by virtue of such delegated power.

3. Scope of Authority. The Land Use Commissioner is charged with the administration and enforcement of this Ordinance, and hereby empowered to carry out administration and enforcement responsibly as defined in this Ordinance and any duly authorized Regulations implementing this Ordinance.
4. Commissioner Administration. The Shivwits Band Council may provide the Land Use Commissioner with sufficient budget for the Commissioner and any needed staff positions to carry out their duties under this Ordinance. Fines and Fees assessed and collected by the Land Use Commissioner shall be used to fund the operation of the Commissioner or for any other use determined by Band Council.
5. Commissioner. The Shivwits Band Council shall perform all required actions and duties of the Land Use Commissioner under this Ordinance until such time as the Shivwits Band Council appoints a Land Use Commissioner.
6. Qualifications of Commissioner. The Land Use Commissioner must:
 - a. Be at least twenty (20) years of age;
 - b. Be an enrolled member of the Shivwits Band;
 - c. Have received a high school diploma or a GED;
 - d. Be willing to maintain loyalty to the Shivwits Band, uphold the oath of office, and must be of good moral character.
7. Appointments. The Shivwits Band Council shall appoint the Land Use Commissioner by Resolution. Before an appointment is made, the Band Council shall publish notice of the open position for at least two weeks, and then accept letters of interest from Band members desiring to serve as the Land Use Commissioner. After fair consideration of all interested persons, the Council shall select the person to be appointed by majority vote of the Council.
8. Terms. The Shivwits Band Council shall appoint the Land Use Commissioner by Resolution for a period of two (2) years. The Resolution of the Shivwits Band Council appointing a Land Use Commissioner shall identify the term dates. There is no limit upon the number of terms that an individual can serve as the Land Use Commissioner, so long as the Land Use Commissioner continues to meet the Qualifications of subsection (6) and the appointment process of subsection (7) is followed with each successive appointment.
9. Removal of Commissioner. The Land Use Commissioner may be removed by Resolution of the Band Council for good cause.
10. Notice and Public Hearing. The Land Use Commissioner may not be removed by the Band Council without first receiving notice of the proposed removal and the

grounds therefore, and having a public hearing before the Shivwits Band Council.

11. Duties and Responsibilities. The Commissioner is responsible to periodically inform the Band Council of their administrative and enforcement stewardship activities.
12. Compliance. The Commissioner shall enforce all provisions of the Land Use Ordinance and regulations implementing this Ordinance. The Commissioner is empowered to initiate enforcement actions to address any non-conforming uses, including but not limited to the issuance of civil fines and/or injunctions.
13. Training. The Land Use Commissioner shall receive ten (10) hours of training in planning and land use law and policy each year.
14. Policy Recommendations. The Land Use Commissioner shall be responsible to provide recommendations to the Band Council regarding land use matters on the Reservation, including National Environmental Policy Act (NEPA) analyses.
15. Regulations. The Land Use Commissioner may promulgate, subject to the approval of the Shivwits Band Council by Resolution, regulations implementing this Ordinance to govern all land and natural resource use permits and processes. The regulations implementing this Ordinance shall have the same force and effect as other Band laws.
16. Comprehensive Land Use Plan. The Commissioner shall assist in the development of a Comprehensive Land Use Plan for the Shivwits Band, which shall be consistent with the purposes of this Ordinance. The Commissioner shall review any proposed Comprehensive Land Use Plan and provide a written recommendation to the Shivwits Band Council regarding adoption of the Comprehensive Land Use Plan and incorporation thereof as part of the Land Use Ordinance. No comprehensive plan related to land use or natural resource management may be proposed to or considered by the Shivwits Band Council without first obtaining the recommendation of the Commissioner.

ARTICLE 6: NON-CONFORMING USES AND ENFORCEMENT

A. EXISTING NON-CONFORMING USES

Non-conforming uses which are in existence as of the date of the enactment of this Ordinance shall have one year from the date of the enactment in which to apply for a permit from the Commissioner. To be in existence as of the date of the enactment of this Ordinance, such use must have been completed and in being, rather than in the process of completion.

B. NO CONTRARY USE

No Person within the Reservation shall use or allow the use of said land or natural resource contrary to the provisions of this Ordinance. Use of property includes, but is

not limited to any utilization, employment, occupation, or application of land or natural resources, and construction or deconstruction of any structure, building, pipeline, or improvement of any kind, above or below grade.

C. NON-CONFORMING USE

Uses of land or natural resources that do not conform to the Findings, Policy, or Purpose of the Land Use Ordinance, regulations implementing this Ordinance, or any of the provisions found therein or herein, constitute a 'non-conforming use,' are not allowed, and shall not be permitted. Non-conforming uses of land or natural resources, regardless of how long they may have been in existence, violate Band law and shall not be permitted or allowed to continue. A use of land or natural resources subject to this Ordinance which is different from the description of the proposed activity in the Application, or a use that exceeds the scope of the use permitted constitutes a non-conforming use.

D. TRESPASS

It is the policy of the Shivwits Band of Paiutes to reserve consent to use Tribal Land to the Shivwits Band Council and to take such action as is necessary to prevent trespass. Individuals or entities must receive permission from the Land Use Commissioner or the Band Council prior to entering, occupying, or otherwise using Shivwits Land, and may be required to obtain a Shivwits Trespass Permit. Imposition of civil penalties for non-compliance with this subsection (D) of the Land Use Ordinance is essential to protect Tribal Land.

1. Trespass Prohibited. Trespass to Shivwits Land is hereby prohibited. Any person who commits trespass to Shivwits Land shall be subject to the assessments and other consequences set forth in this section and available by law, including a civil penalty under Article 7 of this ordinance. The trespass assessments set out herein do not preclude prosecution of the trespass under applicable Tribal, state, and federal law.
2. Closed Reservation. The Shivwits Reservation is a "closed" Reservation, as that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989). The Fort Hall Reservation is closed to the general public, except as described herein. No portion of the Fort Hall Reservation is "open" as that term has been defined by the United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).
3. Trespass Permits. Except for Band members or individuals or entities who have otherwise obtained advanced permission from the Band Council or Land Use Commissioner, no person may enter or trespass on the Shivwits Reservation without express written permission in the form of a granted Shivwits Trespass Permit.

The following shall be exempt from a trespass permit:

- a) Any enrolled Shivwits Band Member or descendent therefrom.
- b) Any person who is on the Reservation to participate in an event, conference, activity, or ceremony sponsored or approved by the Band, for that event conference or activity.
 - a. This exemption is only for such time the event, activity, or ceremony is in effect and is limited to the area of such activity, event, conference, or ceremony.
 - b. Any event, activity, conference, or ceremony that is held within the Reservation that is not acknowledged and arranged by the Band must be registered beforehand with the Land Use Commissioner. The organizer of the event, activity, conference, or ceremony is required to register such event, activity, conference, or ceremony with the Commissioner beforehand, detailing the site and duration of such event, activity or ceremony. Only after such registration is complete may participants in such non-Tribally sponsored events be exempt. The Commissioner is authorized to develop a registration process. This registration process does not other Band laws.
- c) Any person attending a funeral.
- d) Any person, accompanied by a member of the Band, who resides on the Reservation with the Tribal member for less than five (5) days. This exemption does not apply to individuals that are fishing or hunting on the Reservation.
- e) Any person driving on a public road or public highway, provided the person uses such road as it was intended to be used. Any such individual must stay on the public road and cannot pull off, park, or otherwise enter Shivwits Land on the side of the road without a Trespass Permit.
- f) Any person that is a patron of a Tribal or other business, or a person that is engaged in short term commercial activity as a consumer (i.e., patronizing a gas station, convenience store, retail outlet, hotel or casino), during that commercial activity.

The Band Council and/or the Land Use Commissioner shall set a Trespass Permit Fee Schedule.

A Trespass Permit is an independent and separate requirement. Obtaining a license, permit, lease, or right of way grant from another Tribal Department does

not satisfy the Trespass Permit requirements.

4. Notice of Trespass. A Law Enforcement Officer or any Band Representative with authority to enforce this Ordinance may immediately eject an alleged trespasser from trespassed Shivwits Land. The Law Enforcement Officer or Band Representative may serve, or cause to be served, a written notice of trespass and civil assessment up to one thousand two hundred dollars (\$1,200) per day on any person trespassing on Shivwits Land.

The notice shall be delivered either in person or by mailing the notice to the last known address of the person in trespass. The notice shall specify any penalties imposed, the date of the violation, and the location where the violation occurred. The Law Enforcement Officer or Band Representative shall deliver a copy of the Notice of Trespass to the Land Use Commissioner and Chairperson of the Shivwits Band of Paiutes.

Failure of the trespasser to receive actual notice does not waive the Band's right to impose consequences from the date of trespass. The assessment shall be due and payable to the Shivwits Band of Paiutes within twenty (20) calendar days of the notice of assessment. If the recipient believes the Notice of Trespass has been delivered in error, the recipient may contact the Land Use Commissioner. Contact does not automatically pause or cancel the Notice of Trespass. Any such cancellation is at the discretion of the Land Use Commissioner and/or the Band Council. Failure to pay any assessment levied shall be considered an additional violation and constitute grounds for exclusion from Shivwits Land at Band Council's discretion and seizure of property on Shivwits Land.

5. Interest on Penalties. Interest on any delinquent payment of assessments shall accrue at the rate of fifteen (15) percent per year, computed on a daily basis from the first day following the day on which assessment is due until the date the assessment is paid.
6. Additional Trespass Remedies. Any enforcement pursuant to this Ordinance does not preclude other enforcement, including other civil judicial enforcement, enforcement under any other Band ordinance or law, or enforcement from any other applicable entity including the U.S. federal government.

E. ENFORCEMENT

It shall be the duty of the Land Use Commissioner to enforce this Ordinance. The Commissioner may delegate enforcement functions, powers, and duties assigned by this Ordinance to other staff as may be appropriate.

1. Stop Work Order. The Commissioner or designee is hereby authorized to issue written "stop work" and "cease and desist" orders for any activity that fails to comply with the provisions of this Ordinance. Such "stop work" or "cease and desist" orders may be lifted at such time as the Commissioner is satisfied that a good faith

effort is being made to comply with applicable provisions of this Ordinance. Nothing shall prevent the Commissioner from reissuing “stop work” and “cease and desist” orders where warranted.

2. Notice of Violation. Prior to or concurrent with the issuance of a Stop Work Order, if the Commissioner determines that an applicant or other responsible firm, person or corporation has failed to comply with the terms and conditions of a permit or the provisions of this Ordinance, the Commissioner shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this Ordinance without having first secured the appropriate permit, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.
3. Content of the Notice of Violation. Notices of violation shall contain the following:
 - a. The name and address of the owner or the applicant or the responsible person;
 - b. The address or other description of the site upon which the violation is occurring;
 - c. A statement specifying the nature of the violation;
 - d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this Ordinance and the date for the completion of such remedial action, and a date set forth for completion of remedial measures, after which further enforcement action will be taken (except for violations under subsection (D)); and
 - e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.
4. Informal Resolution. The landowner or responsible party will have fourteen (14) days to respond to the Notice of Violation, to present a plan and schedule for compliance, or other proposed resolution of the violation. If the proposed remedy is satisfactory in the opinion of the Commissioner, and the remedy is followed, then no further action is necessary. Responsible parties issued a violation pursuant to subsection (D) are not applicable for an informal resolution.
5. Hearing and Decision. If the landowner or responsible person in responding to the Notice of Violation denies and/or contests the Notice of Violation, the Commissioner shall hold a hearing where the landowner or other responsible party shall have an opportunity to present evidence and argument relative to the Commissioner’s Notice of Violation. The Commissioner shall fix a time and place for the hearing(s) and provide notice of such hearings to the relevant parties. Such notice shall be given not less than ten (10) days prior to the hearing(s) scheduled. At the conclusion of the Hearing, the Commissioner shall issue a written decision within thirty (30) days. The Commissioner’s Decision shall include findings of fact and conclusions reached and may provide for any appropriate remedies.

6. Injunction. If any land is used, or building, structure, or other activity is established or maintained in violation of this Ordinance, the Commissioner is authorized to and may institute, in addition to other remedies, proceedings in Tribal Court to obtain an injunction or undertake other appropriate action to cause the violation to cease or to be corrected. The Shivwits Band Council may take judicial enforcement action on behalf of the Band in a Tribal, Federal, or State forum as the Council deems necessary. Nothing in this Section or any provision of this Ordinance constitutes a waiver of the Band's sovereign immunity.
7. Exclusion. The Land Use Commissioner may recommend the Band Council consider an individual or entity for exclusion proceedings for severe or repeated violations. Severe violations include any actions that are a significant threat to the life, property, health, safety, morals, or general welfare of the Band or any resident of the Reservation. Any exclusion proceeding shall be conducted by the Band Council.

ARTICLE 7: PENALTIES

A. RESPONSIBLE PERSON

Every person, whether as principal, agent, employee, or otherwise, who shall be responsible to any degree for a non-conforming use, or who is responsible to any degree for constructing any building or structure or using land or natural resources contrary to the provisions of this Ordinance or the regulations implementing this Ordinance, or who shall commence to construct, any building or any structure for which a permit is required or to use land or natural resources in such a way as to require the obtaining of a permit, without first obtaining a permit from the Land Use Commissioner, and any Person, whether as principal, agent or employee, or otherwise, who shall use any building, structure, dwelling, or use any land or natural resource, contrary to the provisions of this Ordinance shall be subject to a civil penalty.

B. PENALTY AMOUNT

The civil penalty for each violation of the Land Use Ordinance or the regulations implementing this Ordinance shall be a sum not to exceed one thousand two hundred dollars (\$1,200.00).

C. DETERMINATION OF PENALTY

The Land Use Commissioner shall determine the amount of the civil penalty. Each day during which any non-conforming use or violation exists or continues shall be deemed to be a separate offense.

ARTICLE 8: DECISIONS AND APPEALS

A. DECISIONS

The Land Use Commissioner shall be governed by the policies and purposes of this

Ordinance, the provisions of any implemented Comprehensive Plan and/or Zoning or Land Use Regulations, and the overall development and preservation of the Reservation in the Commissioner's decisions of all applications, petitions, or requests regarding uses of land or natural resources.

1. Decision Time Period

Where a hearing on an application is not requested or not granted, no underlying permits are needed, and the application is complete, the Land Use Commissioner shall decide whether to grant or deny such application within thirty (30) days of completing the Initial Review Procedure. Where a hearing is granted, the application is incomplete, an underlying permit is needed, or extenuating circumstances exist, the Land Use Commissioner shall decide whether to grant or deny such application within a reasonable time, not to exceed one hundred and twenty (120) days. Where necessary based on exigent circumstances, the Land Use Commissioner may extend the decision time period by a reasonable amount of time commensurate with the circumstances.

2. Permit Decision Standards

Decisions of the Land Use Commissioner shall be governed by the Findings, Policy and Purpose of this Ordinance, and any specific substantive permit or use standards. When deciding on a permit application, the Commissioner shall consider whether there is substantial evidence to conclude that granting the permit is consistent with the establishment of the Reservation, the Findings, Policy, and Purpose of this Ordinance. The permit applicant has the burden to produce evidence in support of the application.

3. Record of Decision

In every case, the Land Use Commissioner shall issue a written Record of Decision to the applicant and, if denied, set forth the grounds therefore in the Record of Decision. The Commissioner shall issue the written decision, including findings of fact and conclusions of law, within ten (10) days of rendering the decision, unless the applicant agrees to a longer period of time or the Land Use Commissioner extends the time due to exigent circumstances. Failure to issue the written decision within ten (10) days, however, does not render the decision of the Commissioner invalid. The Land Use Commissioner shall maintain an administrative record for each application and include a copy of every decision of the Land Use Commissioner in the administrative record.

B. APPEALS

1. Standing

Any Person Aggrieved by a final Permit Decision or Record of Decision of the Commissioner may appeal such decision as set forth herein. Any Person challenging a decision of the Land Use Commissioner has the initial burden to

prove by a preponderance of the evidence that the person is aggrieved as defined in this Ordinance. The preponderance of the evidence standard used to analyze standing is deliberately selected so that it is relatively simple for an individual to get his or her case before the Trial Court. Any contiguous property owner shall be automatically deemed Aggrieved.

2. Procedure—Appeal to Band Council for Permitting or Zoning Matters

- a. Appeal – Scope & Deadline. Any person aggrieved by a decision or action of the Land Use Commissioner in a permitting or amendment decision under this Ordinance may appeal to the Band Council within fifteen (15) days of the final Land Use Commissioner’s decision. This fifteen-day time limit is jurisdictional.
- b. Dual Notice of Appeal Filing. To appeal the person must simultaneously file a Notice of Appeal with the Land Use Commissioner and the Clerk of the Band Council.
- c. Content of Notice of Appeal. The Notice of Appeal must identify the final decision of the Land Use Commissioner being appealed, the standing of the appellant, and the basis for the appeal under Band law.
- d. Administrative Record. Upon receipt of the Notice of Appeal, the Land Use Commissioner shall cause a copy of the administrative record, including the Commissioner’s findings of fact and decision to be forwarded to the Band Council’s Clerk within thirty (30) days.
- e. Procedure. The action in and before the Band Council shall be treated as any matter normally brought before the Band Council, but shall include a due process hearing according to the custom and practice of the Band Council.
- f. Defenses and Standard of Review. All defenses, including sovereign immunity, may be asserted by the Shivwits Band or the Land Use Commissioner. It shall be presumed that the final action of the Land Use Commissioner from which the appeal is taken is legal in each and every respect. The role of the Band Council shall be, if sovereign immunity is not asserted, to review whether basic due process was afforded to the person and whether there is clear and convincing evidence indicating that the Commissioner abused their discretion. The clear and convincing standard of evidence is deliberately selected to reflect the appropriate amount of deference due for decisions of the Commissioner, and the authority delegated to the Commissioner by the Band Council.
- g. No Further Appeal. The decision of the Band Council shall be final.

3. Procedure—Appeal to Trial Court for Enforcement Matters

- a. Appeal – Scope & Deadline. Any person aggrieved by a decision or action of the Land Use Commissioner in an enforcement or compliance proceeding under this Ordinance may appeal to Shivwits Band or Paiute Tribal Court if one exists,

or to the Band Council if no Tribal or Band Court exists, within fifteen (15) days of the final Land Use Commissioner's decision. This fifteen (15) day time limit is jurisdictional.

- b. Dual Notice of Appeal Filing. To appeal, the person must simultaneously file a Notice of Appeal with the Land Use Commissioner and the Court Clerk.
- c. Content of Notice of Appeal. The Notice of Appeal must identify the final decision of the Land Use Commissioner being appealed, the standing of the appellant, and the basis for the appeal under Band law.
- d. Administrative Record. Upon receipt of the Notice of Appeal, the Land Use Commissioner shall cause a copy of the administrative record, including the Commissioner's findings of fact and decision to be forwarded to the Court Clerk within thirty (30) days.
- e. Procedure. The action in the Trial Court shall be pursued and treated as any action instituted in the Trial Court, except that this Ordinance will be controlling for any conflicting rules of procedure.
- f. Defenses and Standard of Review. All defenses, including sovereign immunity, may be asserted by the Shivwits Band, the Shivwits Band Council, or the Land Use Commissioner. In the litigation of such action, it shall be presumed that the final action of the Land Use Commissioner from which the appeal is taken is legal in each and every respect. The role of the Court shall be, if sovereign immunity is not asserted, to review whether basic due process was afforded to the person and whether there is clear and convincing evidence indicating that the Commissioner abused his or her discretion. The clear and convincing standard of evidence is deliberately selected to reflect the appropriate amount of deference due for decisions of the Commissioner, and the authority delegated to the Commissioner by the Band Council.
- g. Further Appeal. Any person aggrieved by the final decision of the Trial Court may appeal that decision to any Appellate Court with competent jurisdiction to review decisions of the Trial Court.