

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

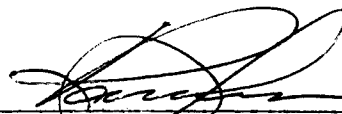
WHEREAS, there is a need to enact an ordinance governing all woodcutting activities on the Fort Apache Indian Reservation, and

WHEREAS, the Woodcutting Committee has completed a draft for a Proposed Woodcutting Ordinance, and

WHEREAS, the Tribal Council recommends public study and comment on the Proposed Ordinance attached hereto and directs that it be posted publicly for a period of ten (10) days for comment by tribal members.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the Proposed Woodcutting Ordinance for a minimum of ten (10) days on the Fort Apache Indian Reservation as required by the White Mountain Apache Tribal Constitution and By-Laws, as amended.

The foregoing resolution was on January 18, 1984 duly adopted by a vote of 9 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council

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FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ.



Secretary of the Tribal Council

Proposed Ordinance No.

PROPOSED ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WOODCUTTING ORDINANCE

An ordinance regulating the woodcutting activities occurring on the reservation and protecting reservation resources and wildlife by providing enforcement measures with which to insure compliance with this ordinance.

BE IT HEREBY ENACTED by the Tribal Council of the White Mountain Apache Tribe that Ordinance No. _____ known as the Woodcutting Ordinance is enacted as follows:

Article I - Short Title

The short title of this Ordinance shall be known as the "Woodcutting Ordinance".

Article II - Purpose

The purpose of this Ordinance is to protect the wildlife and property located on the Fort Apache Indian Reservation which belongs to the White Mountain Apache Tribe ("Tribe") and to provide the means by which the Tribe and its agents will regulate, license and supervise the cutting, collection, use, transportation, sale, and preservation of wood and trees belonging initially to the Tribe as well as protecting against poachers and others who use tribal wood to conceal or harm reservation wildlife. This ordinance applies to members and non-members of the Tribe who cut or use reservation wood or trees for any purpose.

This Ordinance is to be liberally construed so as to effect its objects and to promote justice.

Article III - Saving Clause

This Ordinance does not affect the rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

Article IV - Jurisdiction

Section 1. The White Mountain Apache Tribe shall have concurrent jurisdiction for the adjudication of all violations under this Ordinance.

Section 2. Nothing in this code shall be deemed to preclude the federal prosecution of non-members who trespass under 18 U.S.C. §1165. Any authorized officer may follow the procedure provided by tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided with this code or other parts of the Tribal Law and Order Code, as amended.

Section 3. This code has been enacted to protect the resources of the White Mountain Apache Tribe, and the taking or using of tribal property or services contrary to the terms of this code constitutes theft of tribal assets. Nothing in this code shall be deemed to preclude federal prosecution of violators for theft of tribal assets under 18 U.S.C. 1163. Any authorized officer may follow the procedure provided by tribal to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this code.

Article V - Scope

This Ordinance shall apply to all woodcutters' activities, all wildlife, and all members and non-members participating, conducting, soliciting, and/or assisting in woodcutting activities or any related activities which affects the use, location or condition of trees within the Fort Apache Indian Reservation.

Article VI - Definitions

1. Administrative Cost: Administrative costs are those costs created by implementation of this Ordinance which shall include, but are not limited to, the price of printing and distributing any materials with regard to woodcutting activities and all costs involving the upkeep and repair of damages caused to reservation property because of illegal woodcutting activities. These administrative costs will be borne by the permit users and those who violate sections of this Ordinance.

2. Area: An area shall be defined under this ordinance as any portion of reservation land which has been designed as being so similar in terrain and vegetation as to necessitate a particular type of woodcutting supervision distinct from the surrounding portions of land. All areas shall be posted and marked as is designated by the Wood Product Coordinator Director, the Forestry Committee and/or their agents.

3. Authorizing Agent: An authorizing agent under this code is specified herein as the person who has the power to give validity to the woodcutting use permits and is assigned certain types of permits to authorize under this Ordinance.

4. Camping Wood Permit: This permit shall authorize campers to use a certain amount of firewood for a designated number of campfires which shall be determined by the Tribal Game and Fish Department. The permit must be in the possession of the designated holder, and authorizes that person to use down and dead wood for campfire purposes only, and in a limited amount. This wood may be taken from the camping area only and shall not be removed from the reservation as provided within the provisions of this code.

5. Character Changes: Character changes shall mean any significant changes which would cause the area to be a fire hazard, a sacred land, devoid of any particular type of tree, a danger to the public in general, or any related purpose which changes the area in such a way as to necessitate a change in the classification as to what type of area it is.

6. Closed Areas: Closed areas shall mean any area which is not open to a particular woodcutting activity as is designated by the Wood Product Coordinator, the Forestry Committee or their authorized agent. Any closed area must be marked by a notice sign and be designated on the woodcutting map guide.

7. Commercial Permit: A commercial permit shall be known as a commercial use permit and is for those individuals or partners who engage in the sale of wood for a profit.

8. Commercial Use: Commercial use means the use of reservation timber or down trees for sale and profit and is provided for herein.

9. Conclusive Presumptions: A conclusive presumption shall be one that arises from the circumstances of the activities which involve some woodcutting use and shall establish probable cause for citation for searches and for arrests indicated herein.

10. Cord: A cord, as used herein, shall be defined as any stack of wood which measures 4'x4'x8', or is the equivalent of 128 cubic feet.

11. Designated Holder: Designated holder as provided herein shall be that person whose name is placed on the permit form for a woodcutting use permit and it shall include only those persons listed thereon.

12. Down and Dead Trees: A down and dead tree shall mean any tree which is not standing as a result of natural or accidental forces.

13. Home Use: Home use shall be limited to the families of the Tribal members. It shall include activities which are geared toward the benefit of the home in either using wood for heating or for small construction projects. This shall not include the building of homes.

14. Home Use Permit: A Home Use Permit, under this Ordinance, shall be that permit issued to a designated holder to allow the holder to cut wood in a limited amount for the purpose of home use and for no other purpose. The Home Use Permit shall be limited to home use in the designated holder's home and no other area.

15. Intoxication: Intoxication as used in this Ordinance, shall mean the state of mind which is created with the consumption of alcohol, drugs, glue sniffing, or any other substance which might inhibit the functioning ability of the person who is consuming the substance.

16. Littering: Littering, as used in this Ordinance shall include the deposit of trash, wood debris or any other substance which is not a substance suitable in any area of the Fort Apache Indian Reservation designated as a wood-cutting area. Littering shall include the unstacked wood debris which is left from someone who has engaged in a woodcutting activity, or who enters the area to litter.

17. Load: A load shall be $\frac{1}{2}$ of a cord of wood.

18. Lopping: Once a tree is fallen, lopping constitutes the trimming of the limbs (branches) and portions protruding from the trunk of that tree.

19. Member: Any person who is duly enrolled as a White Mountain Apache and who has a tribal census number.

20. Member-Spouse: This shall mean any tribal member who has his/her census number and, for this ordinance, is married to a non-member; and whose residence is on the Fort Apache Indian Reservation.

21. Non-Member Spouse: This person shall be any person who is married to a member-spouse who resides on the reservation, and has the intent to participate in the Spousal-Notation privilege offered under the Home Use Permit section.

22. Notice Sign: This shall be a conspicuously printed sign which shall notify people who intend to engage in woodcutting activities or who are engaged in woodcutting activities, that an area has been designated as open for certain purposes and closed for other purposes as well as open during some seasons and closed during other seasons. This notice sign shall be placed on each pathway or roadway

which enters an area so that everyone is provided with the information and the knowledge which they should have before engaging in woodcutting activities.

23. Open Areas: This will be an area on the Fort Apache Indian Reservation which has been designated by the Wood Product Coordinator as an area which is open for a particular woodcutting activity.

24. Permit: This shall be the authorization form to engage in certain woodcutting activities on the Fort Apache Indian Reservation.

25. Permit Form: The Permit Form shall be one of two parts composing the Use Permit which authorizes this person to engage in woodcutting activities. This form shall give all of the important information necessary to create a valid permit as described within this ordinance and shall be signed by the authorizing agent.

26. Permit Period: This shall be the time in which a person may utilize his/her use permit. This permit shall be for one year in most cases.

27. Post: Post, under this Ordinance, shall mean any wood which has been cut in a length which is seven feet or longer.

28. Preservation Cost: This shall be the amount of money which is necessary to protect the wildlife and the trees on the Fort Apache Indian Reservation as well as the cost for replanting those trees which have been cleared by woodcutters.

29. Rotten Trees: This shall mean any tree standing or down which is not suitable for woodcutting purposes.

30. Sacred Tree: Any tree on the Fort Apache Indian Reservation which has been designated by Apache culture, custom, or religion as a sacred tree, or is approved by the Tribal Council as a sacred tree. This tree shall be distinguished from all other trees and shall not be used for woodcutting activities.

31. Scheduled Seasons: Any period designated by the Wood Product Coordinator/or his agent as a period during which a particular woodcutting activity may occur in a particular area.

32. Slash: Any wood debris including but not limited to branches, needles, and unuseable tree sections, which are left after a tree is cut.

33. Snag Trees: Any tree which is a standing dead tree on the Fort Apache Indian Reservation.

34. Soliciting: Any activity engaged in by one person with the intent to cause another person to commit a crime or a violation of this ordinance.

35. Spousal Notation: This shall be an indication made in writing on the permit form for the Home Use Permit which indicates that the non-member spousal privilege is being utilized.

36. Spousal Permit: This shall mean that a permit form issued to a member spouse is being utilized by the non-member spouse as a spousal permit, and that this has been authorized by the marking of a spousal notation in the compliance with all the provisions noted in this ordinance, and signed by the authorizing agent.

37. Stump: Stump shall mean any rooted part or segment of a tree which has been left after a portion of the tree has been cut.

38. Tag Code Number: This shall be the number on the tree tag corresponding to the number placed on the permit form for all use permits. It shall prove that the two are one and that they form a valid permit. It shall indicate that each portion of that tag belongs together so that when a load is tagged, each load can be identified.

39. Tag Color: Each tree tag shall be assigned a certain color. That color shall indicate the use authorized on the permit form for woodcutting activities.

40. Tree: This shall mean any large perennial plant, or any portion thereof, with a single permanent woody trunk, and which can be classified as living, snag, down and dead and/or rotten.

41. Tree Tag: This shall be the second part of a two-part use permit. The tree tag shall be that item which will be affixed to each portion of a cut load. The tree tag is that item which is issued and used in conjunction with the permit form and which identifies the cord as that which was authorized to be taken.

42. Wood Debris: This shall mean any portion of a tree which is left lying on the ground or standing in such a way as to not be properly stacked after a woodcutting activity has been completed.

43. Wood Check: This shall mean any search conducted by the authorizing enforcement officer as provided under this ordinance.

44. Wood Product Coordinator: A Wood Product Coordinator (WPC) shall be that person who is hired to perform the duties which are assigned to him under this ordinance and to patrol, survey, and conduct investigations regarding woodcutting activities on the Fort Apache Indian Reservation.

45. Woodcutting: This word shall be used under this ordinance to mean any activity which involves any use of wood or trees belonging to the Fort Apache Indian Reservation including but not limited to the cutting, the use, the burning, the transportation, the movement, the disposal, and/or the sale of a tree.

46. Woodcutting Guide Map: This shall be the map which is distributed by the offices in which use permits may be acquired and it shall indicate the areas, the season, the permitted uses, and the nature of the area designated for every specified woodcutting activity.

Article VII
Qualified Applicants for Woodcutting Permits

No person may cut, sell, or use reservation wood without a valid permit issued to that individual by the Tribe or its agents as provided in this Ordinance.

Section 1. Tribal Members: Tribal members, who have attained the age of 14 years or more, are qualified to obtain a woodcutting permit for home use, special use, and/or commercial use as provided herein. These members are qualified applicants by virtue of their tribal membership and if they reside on the reservation.

Section 2. Non-Members: Unless provided otherwise herein, non-members are not qualified applicants.

A. A non-member may not engage in woodcutting activities, unless the non-member is a non-member spouse; and

(1) can prove existence of a valid and current marriage license to a member;

(2) The non-member spouse has his/her name on the home use permit under the spousal notation section as provided herein; and

(3) the member-spouse is present at all times when a woodcutting activity is performed by the non-member spouse; or

B. The non-member is a camper visiting the reservation; and

(1) has a valid and current camping permit as provided for in the Game and Fish Code;

(2) is camping in an authorized area; and

(3) is cutting only down and dead trees for campfire purposes only.

Section 3. Christmas Tree Cutting: The non-member has obtained a special use permit for the cutting of one Christmas Tree, the sale of which has been previously authorized by tribal resolution as a sale of a specified number of Christmas Trees for a specific time period and in a specified area.

Article VIII - Woodcutting Permits

Permits which are required by the provisions of this Woodcutting Ordinance shall be issued to qualified applicants as provided in Section VII of this Ordinance. Prior to each season, the allotment of permit forms for that season shall be sent to B.I.A. to obtain approval for sale.

Section 1. Each permit shall consist of two parts. Both parts of the permit must be carried and used during any and all woodcutting activities. The parts of the permit include:

A. Permit Form: The permit form shall be issued by the appropriate authorizing agent which is determined by its designated use.

(1) Each permit form shall state the applicant's name, address, telephone number, age and gender, drivers license number, tribal census number, the designated use, the season in which the permit is valid, the area(s) open for holders of this type of permit, the expiration date, whether there is a spouse, or handicapped person involved - the name and address of such person, the tree tag color and code number, and any additional information required by the type of use designated. Tree information shall be completed by the permit holder at the time of woodcutting.

(2) There shall be an original and one carbon copy of this form. The copy shall be retained by the authorizing agent and the original shall be given to the applicant. The original permit is the form given to an eligible household.

(3) No woodcutting permit is valid without the signature of the appropriate authorizing agent as designated under this Ordinance.

B. Tree Tags: Tree tags shall be issued with the permit form in the number designated for the specified use. Tree Tags must be affixed to the first stump remaining when cutting a new cord and placed on each load of wood as provided in Section 1B of this Article. No load may be cut and/or moved without the appropriate tree tag affixed thereto.

(1) A tree tag shall be in one of the three colors listed below depending upon the use permit. The color shall correspond with the designated use:

- (a) orange - home use
- (b) yellow - commercial use
- (c) brown - special use

(2) A tree tag shall separate into three (3) parts. Each part shall have an adhesive backing so that it can be affixed to each $\frac{1}{2}$ cord of wood cut and one stump per cord. One portion of the tag shall be marked "stump".

(3) Each portion of a tree tag shall have a code number printed on it. This code number must correspond to the code number on the permit form to be valid.

(4) No tree tag is valid unless issued with a valid permit form.

(5) Tree tags may not be used if the permit form is not in the possession of the qualified woodcutter at the time he/she has to use the tag as provided herein.

(6) Tree tags may not be transferred to any other holder, used for any other purpose than for which it was designated, or used in any other area than those for which it is designated.

(7) Tree tags expire on the date so designated on the permit form.

(8) The number of tree tags issued with a permit form shall be as follows:

- (a) There shall be one tag for every load of wood. Each load shall be $\frac{1}{2}$ of a cord; thus:

(i) home use: 30 tree tags for 15 cords.

(ii) special use: no tree tags except where provided.

(iii) commercial use: 20 tree tags per every 10 cords issued under one permit.

Section 2. Use Permit: Use permits shall be issued for a period of one year, except commercial use permits which shall be designated by the Wood Product Coordinator.

All proceeds for permits as provided for herein shall be used to maintain this woodcutting program and for implementation of this ordinance. Proceeds not used shall be turned over to the B.I.A. Collection Officer for deposit in the U.S. Treasury as Tribal Trust Funds. The same shall be applied to fines and fees collected under this ordinance which are in excess of repair costs and costs of implementating and supporting this ordinance.

A. All permits and tags shall be in the possession of the designated holder whenever he/she is woodcutting.

B. Woodcutting may be performed only by the designated holder of a permit.

C. Use permits required under this Ordinance shall not apply to the Fort Apache Timber Company located on the Fort Apache Indian Reservation.

Section 3. Types of Permits Available:

A. Home Use Permit: Home use permits may be issued to each qualified tribal member living on the reservation; except that. . .

(1) the home use permit shall be limited to one permit per household;

(2) the designated holders must have attained the age of at least 14 years; and must be tribal members residing with the permit holder on the reservation.

(3) Each member must obtain and use the home use permit in the manner provided in this Ordinance if he/she cuts or uses tribal wood in any manner to promote their home life and environment. This includes constructing objects out of wood or use of the wood for heat.

(4) A home use permit is limited for uses in and around the member's home and may not be used or collected for sale or transportation off the reservation.

(5) A tribal member may designate his/her non-member spouse on the permit form if he/she provides proof of a valid marriage by showing a valid marriage license.

(a) The spouse's name and address shall appear with the spousal notation on both copies of the permit form.

(6) A home use permit provides that the designated holder and only that holder may cut and collect a total of 15 cords per household per year unless expressly provided otherwise herein.

(7) Other qualified members of the household may engage in woodcutting activities if the following occurs:

(a) the member proves he/she is a true household member;

(b) the name of the member is listed on the permit form as a designated holder also; and

(c) the listed member is in possession of both parts of the use permit during the woodcutting activity.

(8) Home use permits shall authorize woodcutting only for designated season and shall be used only in the open areas designated for home use.

(9) Home use permits are invalid if utilized in any other area or at any other time than designated thereon.

B. Commercial Use Permits: Commercial use permits shall be issued to qualified applicants by the tribal business licensing department and signed by the appropriate authorizing agent.

Option 1:

(1) Commercial use permits authorize the designated holder and only the holder to collect a maximum of 100 cords per year.

Option 2:

(1) Commercial use permits authorize the designated holder and only the holder to collect the maximum number of cords per year as is designated by the Wood Product Coordinator.

(2) Commercial use permits authorize wood-cutting only in the designated areas and only for the designated and scheduled seasons.

(3) Commercial use permits must be in the designated holder's possession whenever he/she is cutting wood, or engaging in any woodcutting activity.

(4) Non-members are not qualified to obtain a commercial use permit, and shall not engage in any woodcutting activity for commercial use.

Option 1:

(5) Commercial use permits shall be sold to the holder for \$200.00 per year.

Option 2:

(5) Shall be sold to the holder for \$20.00 per 10 cord/license.

C. Special Use Permits: Special use permits are limited in their use and the time for their use as provided below:

(1) Handicapped Special Use Permits: Members who are handicapped may designate an agent to collect their home use wood limit for use in the handicapped member's residence only if the following proof is provided...

(a) Proof of designation must be notarized and current.

(b) Proof of physical condition of the handicapped applicant must be supplied.

(c) Only the designated agent may utilize this permit on behalf of the handicapped holder.

(d) All other provisions of the home use permit provided in Section 3A of this Article shall apply herein.

(2) Christmas Trees: No permit is required for a Christmas tree; however, Christmas trees are limited to one tree per household. No Christmas tree may be cut if the stump of said tree is greater than 4" in diameter.

(a) Christmas trees may not be sold.

(3) Non-Member Camping Firewood Permit: This permit shall be issued to a qualified applicant by the Game and Fish Department when he/she obtains their camping permit.

(a) No tree tags shall be issued with this permit and the permit form shall indicate that it is a "non-member camper firewood permit".

(b) This permit may be used to collect and cut only down and dead trees in the camping area.

(c) The permit will authorize firewood use for a specified camping period and area.

(d) No wood may be collected beyond this designated area.

(e) The wood authorized for collection under this permit is limited to that amount necessary for the number of camp fires needed during the camping period, as designated by the Tribal Game and Fish Department.

(f) No live or standing trees may be cut.

(g) No firewood may be transported away from the camper's designated area.

(h) The cost of this special use permit shall be included on the camping permit.

(i) Transportation of firewood beyond the designated camping area shall give rise to a rebuttable presumption that an illegal commercial use of the wood, other unauthorized use of the wood, or the poaching of wildlife has or is occurring.

(4) Member Camping Permit: No member camping permits shall be issued. However, members who are camping shall use only enough wood needed for campfires. No green trees may be cut by these campers; and only down and dead wood shall be used for campfires.

Article IX - Woodcutting Seasons

Section 1. Each use permit shall designate a season during which woodcutting may occur for that particular use.

A. The Wood Product Coordinator shall determine appropriate seasons for the various use permits according to forestry studies conducted on behalf of the tribe by said Coordinator.

Section 2. Use permits shall be issued according to the level of fire hazards at any given time, the need for preservation of particular trees, and the preservation of wildlife at that time of year as determined by the Wood Product Coordinator Director and the Tribal Forestry Committee in conjunction with the Game and Fish Department and the Forestry Division of the Bureau of Indian Affairs.

Article X - Woodcutting Areas

Section 1. All areas of the reservation shall be designated for each particular use by the Wood Product Coordinator in conjunction with the Tribal Forestry Committee by a notice sign as defined herein.

Section 2. Closed Areas: Closed areas shall be off-limits for woodcutting activities as follows:

A. Sacred Tribal Lands shall be marked as closed and will always be closed to any and all woodcutting activities.

B. Areas closed for specific uses shall be designated as closed on the notice sign.

C. Each closed area must be so designated on the woodcutting map guide.

Section 3. Open and Closed Areas: An area may be open for certain uses and closed for other uses simultaneously.

Section 4. Woodcutting Map Guide: The woodcutting map guide shall be issued to all permit-holders.

A. The map guide may be color-coded with the notice signs to designate open and closed areas for a particular season.

B. The map guide must be reissued each time significant area character changes occur designating a new season.

Section 5. Notice Signs: Notice signs must be placed at each pathway entrance to an area and must be placed in a conspicuous location and form.

Section 6. Area Use: Use of an area must correspond to the use specified on the woodcutting permit and at the time specified.

Article XI - Wood Available For Use

Section 1. Live Trees: Live trees may not be cut on the reservation except as follows:

A. If no wildlife depends solely on this live tree for food and shelter; or

B. the use is for religious purposes; or

C. the trees are authorized for cutting by the Tribal Council:

(1) These live trees have been authorized for cutting for home use by the Tribal Council:

(a) alligator juniper

(b) scrub oak or Arizona white oak

(c) shaggy bark cedar

(d) gamble oak

(2) No aspen tree shall be cut unless it is dead and down; or unless there is special authorization or regulations which provide for the cutting of live aspen for certain purposes.

Section 2. Standing Dead Trees: Standing dead trees may be cut if they are in the authorized area, and. . .

A. The tree is, in fact, dead; and

B. No wildlife depends on this tree for food and shelter; and

C. No tree listed below is cut where the diameter of said tree is as follows:

(1) Oaks: 8" or greater in diameter at height of 4½ feet.

(2) Ponderosa Pines: 12" or greater in diameter at height of 4½ feet.

D. The trees listed in subsection C above become cavities for wildlife use.

Section 3. Down and Dead Trees: Down and dead trees may be cut if located in an authorized area; but. . .

A. The tree must be down before woodcutting activities begin;

B. The tree must not be a sacred tree as defined herein; and

C. If no wildlife depends solely on this tree for food and shelter.

Section 4. Wildlife Dependency: Trees may not be cut or damaged if there is wildlife which depends solely on these trees for food and shelter as defined in the Game and Fish Code regarding preservation of wildlife.

Section 5. Prohibited Tree: No tree designated as a prohibited tree for woodcutting purposes in the Game and Fish Code may be cut or damaged in any way.

Section 6. Tree Removal: The Game and Fish Code provisions which pertain to the manner of use and removal of reservation trees are incorporated herein.

Section 7. Rotten Trees: Rotten trees may be cut; but once cutting begins, the wood debris caused by such woodcutting activities must be lopped as described in Article XII of this Ordinance.

Article XII - Woodcutting Procedures

After the proper permit is obtained, the following provisions apply to all woodcutting activities except where otherwise designated.

Section 1. Specifications:

A. No woodcutting activity shall be performed by anyone other than the permit holder except as provided in Article VIII of this Ordinance.

B. When wood is cut, the permit holder shall tag the tree as follows:

(1) Each $\frac{1}{2}$ cord shall be tagged with a portion of the appropriate tree tag. The other $\frac{1}{2}$ of that same cord shall be tagged with the second and corresponding portion of the tree tag. The remaining portion of the tag is used for the stump. That portion of the tag is marked "stump".

(2) One part of the tag shall be placed on each load of the wood cut from a particular tree area so that no load of wood is untagged.

(3) The stump of the tree which is first cut in a load must be tagged with the portion of the tag used for that tree and marked "stump".

(4) Failure to tag the first stump of a cord and each load cut or taken by the permit holder is a violation of this Ordinance and shall give rise to a presumption of illegal commercial use or other unauthorized use of this wood.

(5) The trees shall be tagged at the time of the cutting of the wood.

(6) Except as provided otherwise in this Ordinance, every permit holder must tag each load before moving the load from the woodcutting area.

(7) No tree may be cut if it cannot be tagged immediately.

C. The permit holder must be in possession of his/her permit at each stage of the woodcutting activity.

D. Each stump left after the cutting of a tree must measure no more than 10" high.

E. A cord is 4'x4'x8' or 128 cubic feet.

F. All wood debris caused by woodcutting activity shall be lopped no higher than 18" from the ground.

(1) Slash measuring 2 ft. and higher constitutes a fire hazard which is a violation of this Ordinance.

(2) Failure to lop the wood debris is a violation of this Ordinance and subjects the violator to a citation under this Ordinance in

addition to the imposition of the costs incurred by the Tribe to hire someone to lop this debris.

Section 2. Restrictions:

A. There shall be no activities which may result in intoxication in the woodcutting areas.

(1) If a permit holder is intoxicated while accompanied by non-permit holders who are illegally engaging in woodcutting activities by their presence, there will be a rebuttable presumption that:

(a) illegal woodcutting is or has occurred;

(b) the non-permit holders have solicited the illegal woodcutting activity and intoxication activity; and

(c) there has been a violation of this Ordinance and that the violator, constitutes a threat to the life and property of the Tribe,

B. Littering of any kind in the woodcutting areas is prohibited.

(1) A person who litters in a woodcutting area, whether the area is open or closed, constitutes a violation of this Ordinance.

(2) A violation of this subsection shall make the violator liable for the costs of cleaning up the littered area in addition to the fees or fines imposed by the citation issued.

C. Reservation wood may not be removed from the reservation unless specifically authorized by the use permit.

(1) Removal in violation of this subsection shall give rise to the presumption that the wood is being removed for illegal commercial use.

(2) Removal constitutes a violation of this Ordinance and subjects the violator to citation.

(3) A citation issued for illegal removal and commercial use shall constitute the probable cause necessary for seizure of perishable or disappearing evidence.

(a) The wood involved in this situation may be immediately seized by the officer or game ranger who is issuing the citation.

D. Posts may not be cut at any time unless specifically authorized by the home use permit or by a provision of this ordinance, or any other tribal ordinance addressing this issue.

(1) A post constitutes logs which are 7 feet in length with a 3½ inch top diameter.

(2) Posts shall not be sold for commercial purposes.

Article XIII - Wood Product Coordinator

A Wood Product Coordinator shall be hired to perform the surveys, supervise designation of areas and seasons, direct and manage forest studies; implement the woodcutting ordinance; supervise and authorize the sale of home and special use permits; review the effectiveness of the program; regulate and coordinate the printing of needed materials; disseminate information to the public, keep informed of current methods of forestry management which may assist the Tribe in caring for reservation timber and carry out objectives set by the Tribal Council.

Article XIV - Authorizing Agents

No permit is valid without the signature of the appropriate authorizing agent.

Section 1. There shall be four authorizing agents who must sign the permit form described herein.

A. The Peddler's Permit Director shall be the authorizing agent for all commercial use permits.

B. The Game and Fish Director shall be an authorizing agent for all special use and home use permits.

C. The Wood Product Coordinator shall also be an authorizing agent for special use and home permits.

Section 2. Authorization may be given by the above-listed agents only as prescribed in this Ordinance.

Section 3. Any authorizing agent who issues a use permit to an unqualified applicant or who issues a use permit in a manner not prescribed by this ordinance will be deemed to have violated this ordinance and shall be cited and possibly dismissed.

Article XV - Violations

Section 1. Failure to comply with any provision of this Ordinance shall constitute a violation of this Ordinance and the White Mountain Apache Law and Order Code, incorporated by reference herein.

Section 2. A violation of this Ordinance shall subject the violator to the enforcement and court procedures provided herein as well as those provided by the Tribal Law and Order Code, as amended, and by federal law.

Section 3. A violation of this Ordinance constitutes both a threat and danger to the life and property of the White Mountain Apache Tribe.

Article XVI - Enforcement Procedures

Section 1. This Ordinance shall be enforced by the Game and Fish Department, their rangers, the Wood Product Coordinator Director, Authorizing Agents, the Tribal Police Department and the Tribal Boundary Patrol Officers, Tribal Trapper, B.I.A. Forestry Agents and other authorized personnel.

A. Except the authorizing agents, all enforcement officers listed in §1 above shall have the authority to implement all enforcement procedures provided herein.

B. Authorizing Agents are limited to citing any individual obtaining a use permit by an unauthorized means.

Section 2. Wood checks may be conducted by enforcement officers in the following situations:

A. Whenever a person is engaged in a woodcutting activity, the officer may make a wood check for proper permits, tagging, use, area and season, and for any violations of any provision of this ordinance.

B. Whenever a vehicle is seen leaving or appears to be leaving the reservation with a load of wood, there shall be probable cause for the officer to stop said vehicle to make a wood check.

C. Whenever a person has been issued several citations or warnings for the same or similar violations of this Ordinance and is apparently engaged in the same or a similar violation, the Officer may stop the alleged violator to determine if a violation of this Ordinance has actually occurred or is about to occur.

Section 3. A wood check shall include a check of the permits and items listed in §2A of this Article, but will also include a check of the wood and anything in the immediate vicinity of the wood and/or anything in plain view. Wood checks include searches for:

A. Poached animals where probable cause exists.

B. The possibility of a concealed poached animal, whenever probable cause exists.

(1) a violation of this ordinance;

(2) the cause of unusual or suspicious circumstances occurring.

(a) Poached animals and the wood in which they are concealed are subject to immediate seizure by enforcement officers to prevent the evidence from vanishing.

Section 4. Citations shall be issued by enforcement officers for violations of the provisions of this Ordinance.

A. The citation shall identify which provision has been violated;

B. The citation shall identify the alleged violator, his/her address, phone number, and permit number (if available) and the license number, make, and model of violator's vehicle;

C. The citation shall identify the issuing officer, and any witness of the violation;

D. The citation shall indicate the area number, date of violation, and fee class for that particular violation as provided herein;

(1) The officer shall explain the amount of the fee for the violation class to the violator.

E. The citation shall state that the defendant is either to enter a plea of guilty or nolo contendere in the Tribal Court, or to enter a plea of not guilty

and request that a court date be set for a hearing on the matter by the Tribal Court Clerk within ten days from issuance of the citation. In the former case, a fine, restitution fee and/or sentence shall be imposed if the violator is found guilty.

F. The issuing officer shall write the date of the last day on which the defendant may comply with subsection E of this section.

(1) This last day shall be ten days from the issuing date of the citation.

(2) Failure of the alleged violator to comply with subsection E above shall constitute contempt of court.

G. The citation shall consist of three copies. One copy of the citation shall be retained by the issuing officer. The original citation shall be given to the violator. The third copy will be given to the Clerk of the Tribal Court.

Section 5. Any non-member crossing the reservation with non-reservation wood may be stopped for a wood check but will not be cited if:

A. The non-member has a valid woodcutting permit issued by the U.S. Forest Service, Arizona State Land Department, or the Bureau of Land Management; and

B. The non-member is not engaged in an illegal woodcutting activity on the reservation; and

C. The standardized woodcutting permits removal record section has been completed by the permit holder prior to being stopped on the reservation; and

D. If the information on the removal record section of the permit corresponds to the load being transported at the time of the wood check.

E. Failure to meet the requirements of this section will give rise to a rebuttable presumption that the non-member has engaged in an illegal woodcutting activity on the reservation.

Article XVII - Court Hearings

Section 1. Each person who is issued a citation under this ordinance has the right to request a court hearing on the matter.

Section 2. Failure to appear in court may result in the defendant being held in contempt of court and is a violation of this ordinance and the Tribal Law and Order Code, as amended.

Section 3. Any citation which includes a possible jail sentence shall be automatically set for a court hearing within ten days of the citation.

Article XVIII

Fines, Imprisonment and Restitution Fees

Upon a finding (including plea of guilty or nolo contendere), the following schedule shall be applied for each class of violations and each class of violators:

Section 1. Members: Violators who are members of the Tribe shall be subject to the following fines, imprisonment, and/or restitution fees:

A. Class A Violations: Anyone found guilty of a Class A violation may be fined not more than \$50.00 and shall forfeit all use permits connected with this violation.

B. Class B Violations: Anyone found guilty of a Class B violation shall be fined no more than \$100.00 and shall forfeit all use permits connected with the violation.

C. Class C Violations: Anyone found guilty of a Class C violation shall be fined no less than \$150.00 and no more than \$200.00 and/or shall be sentenced to not more than 60 days in jail. Use permits connected with the violation shall be forfeited.

D. Class D Violations: Anyone found guilty of a Class D violation shall be fined not less than \$500.00 and not more than \$750.00 and/or shall be sentenced to a period not to exceed 60 days in jail; and shall forfeit all use permits issued to the violator.

E. Class E Violations: Anyone found guilty of a Class E violation shall be fined an amount not less than or greater than \$1,000.00 and/or shall be sentenced to jail for a period not greater than 6 months; and shall have all woodcutting privileges suspended for a period not exceeding two years. Restitution fees in the amount of the damages caused to tribal property may also be assessed against the violator.

Section 2. Non-Members: Non-member violators who are found guilty of violating this ordinance (including judgments entered by default and pleas of guilty and nolo contendere) are subject to the following restitution fee and exclusion schedule:

A. Any finding of guilty under this ordinance shall constitute a danger or threat to the lives, property, and sovereign immunity of the Tribe and is a conviction under the Tribal Law and Order Code, as amended.

B. Class A Violations: Anyone found guilty of a Class A violation shall pay a restitution fee of not greater than \$75.00 and shall forfeit camping privileges (if applicable) on the reservation for a period of not greater than six months.

C. Class B Violations: Anyone found guilty of a Class B violation shall pay restitution fee not exceeding \$100.00.

D. Class C Violations: Anyone found guilty of a Class C violation shall pay a restitution fee in an amount not greater or less than \$300.00 plus any costs incurred by the Tribe to hire and pay personnel to remedy the damaged property or life.

E. Class D Violations: Anyone found guilty of a Class D violation shall pay a restitution fee not to exceed but no less than \$500.00.

F. Class E Violations: Anyone found guilty of a Class E violation shall pay a restitution fee in an amount not exceeding \$2,000.00 but not less than \$1,000.00 plus any additional labor costs needed to stop, prevent, or remedy the effects of the violation.

Section 3. Anyone found guilty of any violation under this Ordinance shall forfeit whatever wood is in his/her possession at the time of the violation and/or citation.

Section 4. The amounts listed above for violations are in addition to clean-up costs incurred by the Tribe as provided in this Ordinance.

Section 5. Violations are classified as follows, except that any non-member engaged in a woodcutting activity without authorization shall fall under the purview of a Class E violation:

A. Class A Violations include violations of Article VII: §1; Article VIII: ¶1, §1A(1), §3A(1), (2),

(3), (4), (5)a, and 7, §3C(1)(d) and (2); Article XII: §1D and E.

B. Class B Violations include violations of Article VIII: §1 A and 1 A(3), §1 B(5), §3 C(3)(b), (c), (d), and (f), and C(4); Article XI: §7; Article XII: §1B (4) (5) (6) and (7), §1 F, §2A [except (1)] and B; and Article XIV: §2.

C. Class C Violations include violations of Article VII: §2A (1)(d); Article VIII: §1B(4) and (6), §2A, §3A(6), (8), and (9), B(1) and (2), and C(3)(d); Article X: §§2, 3, and 6; and Article XII: §2D; Article XVII: §2; and Article XI: §2C and D.

D. Class D Violations include violations of Article VIII: §1 B, §2 B, §3 B(3), C (1)(c) and Article XI: §1 C(2); and Article XII: §1A and C.

E. Class E violations include violations of Article VII: §§2 and 3; Article VIII: §3 B(4) and C(3)(g) and (j); Article XI: §1, §1 A, §2 B, §3 C, and §4 and 5; and Article XII: §1F(1) and §2A(1) and (c).

Article XIX - Sovereign Immunity

Nothing in this ordinance constitutes consent by the White Mountain Apache Tribe, its sub-organizations, or any agent thereof to be sued in any court. This ordinance does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose.

Article XX - Effective Date

This Ordinance shall be prospectively applied beginning _____, 19__.

Article XXI - Severability Clause

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.