

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

**WHEREAS,** the Tribal Council of the White Mountain Apache Tribe, by prior resolution, adopted Miscellaneous Wood Products Rules and Regulations; and

**WHEREAS,** in order to enhance enforcement of the rules and regulations so adopted, the Tribal Council directed that the rules be drafted into a tribal ordinance with criminal and civil penalties; and

**WHEREAS,** the office of the Tribal Attorney has prepared a proposed ordinance in the form and content attached hereto and incorporated by reference herein, for review and discussion by the Tribal Council and for posting in each district throughout the reservation for purposes of soliciting tribal member and public comments; and

**WHEREAS,** the Tribal Council concludes that the proposed ordinance should be posted as required by the Tribal Constitution in order to ensure widespread knowledge and discussion.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post in each district for a minimum of ten (10) days, the attached proposed amendment regulating miscellaneous wood products for the Fort Apache Indian Reservation in the form and content attached hereto and incorporated by reference herein.


The foregoing resolution was on August 28, 1992, duly adopted by a vote of five for and two 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 Bylaws 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).

**RECEIVED**

SEP 2 1992

FORT APACHE INDIAN AGENCY  
WHITERIVER, ARIZONA

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

PROPOSED ORDINANCE OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION  
PROVIDING FOR THE REGULATION, PROTECTION  
AND HARVESTING OF MISCELLANEOUS FOREST PRODUCTS

TITLE: MISCELLANEOUS FOREST PRODUCTS ORDINANCE

CHAPTER ONE  
MISCELLANEOUS FOREST PRODUCTS

SECTION 1.0 PURPOSE

The development, maintenance, enhancement and protection of the wood lands and forest lands of the White Mountain Apache Tribe; to ensure the application of sound silvicultural and economic principles to the harvesting of miscellaneous forest products as defined herein, prevention of trespass and to provide for the enforcement of rules and regulations pertaining to miscellaneous forest products.

SECTION 1.1 DEFINITIONS

- A. "Commercial Forest Land" means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.
- B. "Forest or Forest Land" means an ecosystem at least one acre in size, including timberland and woodland, which is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.
- C. "Forest Products" means marketable products extracted from tribal forests, such as: timber, timber products; including, ties, bolts, logs, pulpwood, fuel wood, posts, poles and split products; bark; Christmas trees, stays, branches, firewood, berries, pinyon nuts, roots, acorns, syrups, wild rice and herbs, and other marketable material.
- D. "Forest Resources" means all the benefits derived from tribal forest land, including forest products, soil

productivity, water, fisheries, wildlife, recreation and aesthetic or other traditional values of tribal forest land.

- E. **"Indian"** means a member of an Indian tribe.
- F. **"Indian Forest Land"** means Indian or tribal land, including commercial, non-commercial, productive and non-productive timber land and woodland that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.
- G. **"Indian tribe or tribe"** means any Indian tribe, the White Mountain Apache Tribe, band, nation, rancheria, pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribes' reservation.
- H. **"Miscellaneous Forest Products"** means forest products other than those permitted to be harvested pursuant to approved timber sales authorized by Tribal Council Resolution, tribal or BIA approved thinning contracts, logging contracts and subcontracts, and fuel breaks and green belts approved by the Bureau of Indian Affairs or by Tribal Council resolution.
- I. **"Reservation"** means the Fort Apache Indian Reservation of the White Mountain Apache Tribe comprised of all lands within the exterior boundaries of the Fort Apache Indian Reservation.
- J. **"Secretary"** means the Secretary of the Interior or his or her authorized representative.
- K. **"Stumpage Value"** means the value of a forest product prior to extraction from tribal forest land.
- L. **"Trespass"** means the removal of forest products from tribal forest land or the severance of or injury to trees and plants on tribal forest land except when authorized by law and applicable federal or tribal regulations or authorization. Trespass includes any damage to forest resources on tribal forest lands resulting from activities under contract or permits obtained through fraud or material misrepresentation of fact. Trespass also includes unlawful possession of tribal forest products and the unlawful or wanton injury of or destruction of any tree or trees growing, standing, or being upon tribal

forest lands of the White Mountain Apache Tribe. Fire Trespass is the act of willfully or accidentally and without authority, setting fire to or causing to be kindled, any timber, underbrush, grass or other inflammable material on and within tribal forest lands. It includes fires, authorized or unauthorized, with a point of origin on or off the trespassed property, which are left unattended or unextinguished and allowed to burn out of control and cause damage to tribal property or which require expenditure of public or private or tribal funds to control or extinguish.

- M. **"Woodland"** means forest land not included within the timberland classification, stocked or capable of being stocked, with tree species of such form and size that the wood content is generally marketable within the region for products other than lumber, pulpwood or veneer.
- N. **"Woodland Enforcement Officers"** means those officers duly commissioned by the Whiteriver Police Department with authority to enforce the Miscellaneous Forest Products Ordinance and tribal codes, rules and regulations governing protection and conservation of tribal forests and woodlands.

## **SECTION 1.2      TIMBER PERMITS**

A. A Timber Cutting Permit (Form 5-5331) is required for harvesting miscellaneous forest products for any purpose except as exempted pursuant to Section 1.15. Permits will be issued to tribal and non-tribal members, except as otherwise provided for in this ordinance. Non-tribal members will be allowed to cut in designated areas only in accordance with Section 1.23 of this ordinance. For tribal members a tribal census number is required, except under the provisions of Section 1.20 of this chapter.

B. Permits shall be issued at the Bureau of Indian Affairs, Fort Apache Agency Forestry Office or the Tribal Forestry Office. Vehicles transporting miscellaneous forest products shall be identified on the permit with a description of the vehicle and license plate number. If an alternative vehicle is to be used, either Forestry office must be notified by providing it with the description of the alternate vehicle and license plate number.

C. Tribal and non-tribal members purchasing a paid permit pursuant to Section 1.17 and Section 1.23, or a free use permit pursuant to Section 1.15, shall receive load removal tickets which shall be displayed in plain view by attaching said tickets to the rear of the vehicle.

D. A copy of instructions and map shall be attached to each permit issued.

**SECTION 1.3      STUMPAGE VALUE**

A. The stumpage value of forest products harvested without formal contract in fiscal year October 1 through September 30, by any individual under free-use cutting authority shall not exceed \$2,500.00.

B. The maximum stumpage value of forest products harvested without formal contract under paid permit authority in fiscal year by any individual is \$10,000.

**SECTION 1.4      REMOVAL, DESTRUCTION, CUTTING OF GREEN TREES PROHIBITED**

A. It shall be a violation for any person, without lawful authority, to willfully injure, sever, girdle, cut or remove from tribal forest land, for any purpose, any green tree or green wood, timber or shrub. Proof of tribal ownership of the premises and commission of the acts by the trespasser or violator shall be prima facie evidence that the acts were committed wilfully, intentionally, and without the required consent.

**SECTION 1.5      TRANSPORTING FOREST PRODUCTS; BILL OF SALE**

A. Hauling miscellaneous forest products on the reservation without a bill of sale or timber cutting permit is prohibited, except under Section 1.15 of this chapter.

B. The bill of sale shall contain a description by local landmarks of where the forest products were cut, the volume or amount and species purchased, description of the vehicle transporting the products, names, address and signatures of both purchaser and seller. The bill of sale or timber cutting permit must be carried by the person in charge of transporting forest products on the reservation and must be exhibited to any officer of the law, Tribal Game and Fish Department Officer, Woodlands Enforcement Officer or Bureau of Indian Affairs personnel, upon request.

C. Miscellaneous forest products transported on the reservation without a bill of sale or timber cutting permit, except as provided for in Section 1.16, Free Use Cutting Without Permit, shall be subject to confiscation by the Tribal Police, Tribal Game and Fish officers, and Tribal Woodland Enforcement officers. Forest products species not identified

on a timber cutting permit will be considered illegal and subject to confiscation. Confiscated products shall be impounded at a designated compound. Forest products will be distributed to the four elderly rest homes on the reservation, to disabled persons, and/or sold by the Bureau of Indian Affairs, the proceeds of which will be transferred to the Tribe after disposition of any citation issued for violations. Any violation of this section shall be punished as an offense pursuant to applicable provisions of this ordinance.

**SECTION 1.6      CHRISTMAS TREES**

A. Christmas tree cutting by anyone is prohibited in the following areas:

(i) Mt. Baldy Wilderness Area;

(ii) within 1/4 mile of any spruce clear cut blocks as defined in Tribal Resolutions 79-165 and 79-166;

(iii) within 1/4 mile of established lakes and campgrounds;

(iv) Sunrise Ski Park;

(v) within 200 feet of any state highway, which includes the Hawley Lake Road.

B. Cutting a large tree just for the top section (to take home for the Christmas tree product) is prohibited.

C. The maximum stump height shall not exceed ten (10) inches on the uphill side for a legally cut Christmas tree.

D. Violators of this section will be subject to the penalties set forth in Section 1.4 of this ordinance.

**SECTION 1.7      NON-TRIBAL MEMBER SPOUSE**

A. A non-tribal member married to a tribal member must be accompanied by his/her spouse and/or tribal member children when cutting and/or transporting miscellaneous forest products on the reservation. Non-tribal members cannot sell miscellaneous forest products personally; only the enrolled tribal member spouse has the right to sell forest products. This section will apply to all miscellaneous forest products harvested for resale or exchange for goods or services by tribal members. Violation of this section is an offense.

**SECTION 1.8 FIREWOOD CUTTING; AREAS PROHIBITED**

A. Firewood cutting is prohibited within 200 feet from the edge of streams, lakes, stock ponds, cienegas, campgrounds, homesite lot boundaries, state highways, Sunrise Ski Park, all closed areas and within 200 feet of the exterior perimeters of tribal ceremonial grounds. All tops and limbs shall be utilized to a four inch diameter. Maximum stump height shall not exceed 12 inches on the uphill side.

B. Firewood cutting will not be allowed in areas where there is an active logging operation in progress. After logging operations have ceased in an area, tribal community services may enter the area with a special free use permit issued by BIA or Tribal Forestry to cut and remove push green trees or cut green trees from logging road construction and shall remove and store said wood at a designated wood yard for disposition by the Tribal Council. No other persons or entity shall be permitted to so enter and cut or remove said push or cut green trees.

**SECTION 1.9 FIREWOOD CUTTING; SPECIES DESIGNATED; RESALE**

A. Only dead standing and dead down Rocky Mountain juniper, Utah juniper, One-Seed juniper, Pinyon, Oak, Spruce and Aspen will be harvested as firewood products for resale under a paid permit.

B. Green Shaggy Bark Juniper (Rocky Mountain, Utah and One-Seed) can be cut for firewood under paid permit in designated areas on the reservation. These cutting blocks will be identified by Bureau of Indian Affairs or Tribal Forestry personnel. These blocks will be identified at the time the permit is issued.

C. Dead standing and dead down Alligator juniper firewood is available to tribal members for home use under a free use permit. Alligator Juniper products shall not be harvested for resale by anyone.

**SECTION 1.10 FIREWOOD CUTTING; SPECIES PROHIBITED DURING AUTUMN**

A. During the period October 15 through May 15 no one is permitted to cut standing Gambel oak or Aspen for firewood due to the fact that Gambel oak and Aspen leaves fall during the autumn, which makes it difficult to determine which trees are dead. Anyone cutting standing or hauling green Gambel oak and Aspen for firewood during the period October 15 through May 15 shall be guilty of an offense.

B. Tribal members may cut dead and down Aspen or Oak species for firewood. Non-tribal members may cut Aspen pursuant to Section 1.21.

**SECTION 1.11 ENFORCEMENT OF FOREST REGULATIONS**

A. Cutting practices will be monitored by Tribal Woodland Enforcement Officers and Bureau of Indian Affairs forestry personnel. The Tribal Police, Tribal Game and Fish officers and Tribal Woodland Enforcement Officers shall have authority to enforce this ordinance through field inspections. Copies of each permit issued will be sent to the Tribal Police, Game and Fish Officers, and Woodland Enforcement Officers. National Forest Service Personnel and off-reservation law enforcement officers will be contacted periodically to assist in monitoring firewood hauling off the reservation.

**SECTION 1.12 DUMPING PROHIBITED AT FIREWOOD CUTTING SITES**

A. It is prohibited to dump trash of any type at firewood cutting sites. All man-made litter, including, but not limited to, oil cans, fuel containers and beverage containers shall not be left scattered at wood cutting sites. All such litter must be hauled out of the forest along with the firewood. Violators may be prosecuted pursuant to the Tribal Game and Fish Code, Section 7.2(6) Litter roads, roadsides, campgrounds, waters or any tribal land on the reservation - \$100.00, and in addition, penalties prescribed in this ordinance.

**SECTION 1.13 CLEARING ACCESS ROADS PROHIBITED**

A. It is prohibited to cut fences, leave gates open and clear access routes to firewood sources from established forest roads. Anyone damaging fences will be fined \$50.00 pursuant to the Tribal Game and Fish Code, Section 7.2(14) (Cut, damage, or destroy any fence on the Reservation - \$50.00). Anyone found guilty of this Section will not be issued a paid or free permit for two (2) years; and, in addition, penalties prescribed in this ordinance.

**SECTION 1.14 REPORTING VIOLATORS OF FORESTRY REGULATIONS; SILENT WITNESS**

A. Any person having information concerning violations of this ordinance, and who reports said violations to authorities which leads to the arrest and conviction of said violator, will be paid the amount of \$25.00. The identity of any person reporting said information shall be kept strictly confidential.



**SECTION 1.15 FREE USE PERMIT**

A. Free use permits will be issued for the entire reservation (except in restricted areas) to any enrolled adult tribal member (18 years old and older) for the following purposes:

1. Fence posts, poles and stays for personal use. No more than 200 green fence posts per year per household shall be authorized.
2. Firewood for personal use on the reservation. Each household shall be limited to six cords per year.
3. Firewood transported off the reservation by tribal members for personal use at their residences. No more than six cords per year per household shall be authorized.
4. Tribal members living off the reservation may be issued a Christmas tree permit for personal use with a limit of one tree per household.

B. Free use permits will be issued to reservation schools, recognized religious organizations, tribal organizations and local public service units for forest products used within the reservation.

C. Recognized religious organizations with non-tribal member pastors shall have tribal members cut firewood for their respective churches. Churches that are heated solely by woodstoves shall have access to an unlimited supply of firewood.

D. Free use permits shall be issued for transplants for landscaping around homes on the reservation. Areas designated for transplant digging shall be indicated on the permit.

E. Free use permits shall be issued for the annual limit of products to be cut for the duration of the present fiscal year.

F. Free Use Products:

| <u>PRODUCT</u> | <u>SPECIES</u>   |
|----------------|--|
| Christmas Tree | Pinyon, Spruce, Douglas fir and White Fir. Pinyon shall be six feet or less. |

|                  |   |
|------------------|---|
| Firewood         | All dead standing and down, except standing Ponderosa pine snags. |
| Fence Post/stays | Juniper, all species.   |
| Poles            | Aspen and Ponderosa pine (TSI slash only)                         |
| Transplants      | All Reservation Species.  |

**SECTION 1.16 FREE USE WITHOUT PERMITS**

A. No permit is required for tribal members to cut willow, cottonwood, aspen, fir, pinyon, juniper, walnut or Gambel oak saplings/branches. Aspen shall not be cut in highway rights-of-ways and within 200 feet of right-of-way fences. These products shall be used for ceremonials and other home uses.

B. No permit is required for tribal members to cut firewood for wakes and ceremonials. There is no limit on the amount under this section.

C. No permit is required for tribal members to cut one Christmas tree per household living on the Fort Apache Indian Reservation.

D. No permit is required for campers with valid camping permits to gather and use firewood while camping on the Fort Apache Indian Reservation.

**SECTION 1.17 PAID PERMITS**

A. The following stumpage rates shall apply to all miscellaneous forest products harvested for resale or exchange for goods or services by tribal members and any tribal enterprise. Fort Apache Timber Company is included under this section for their annual Christmas tree donations to customers. Paid permits require payment in advance. The load removal ticket received will be attached on the rear of the vehicle. Unused balances will not be refunded, nor the permit expiration date extended. Tribal members are prohibited from selling Christmas trees. Rates established in this section may be changed annually by Tribal Council Resolution without amending this ordinance.

| <u>RATES</u>   |   |               |                   |
|----------------|---|---------------|-------------------|
| PRODUCT        | SPECIES   | TRIBAL MEMBER | TRIBAL ENTERPRISE |
| Christmas Tree | Pinyon, Spruce, Douglas-Fir and White Fir. Pinyon pine shall be six feet or less in height. | N/A           | \$2.00/Tree       |
| Firewood       | All dead standing and down, except standing Ponderosa pine snags and Alligator Juniper.     | \$4.00/Cord   | \$7.00/Cord       |
| Fence Post     | All Junipers, and Oak   | \$0.10/Post   | \$0.25/Post       |
| Stays          | All Junipers, Oak, Aspen, Ponderosa pine and dead snags.                                    | \$0.02/stay   | \$0.04/stay       |
| Poles          | Aspen   | \$0.50/Pole   | \$1.00/Pole       |
|                | Ponderosa pine (TSI slash only) Less than 4.0" dbh.   | \$0.06/Pole   | \$0.12/Pole       |
|                | 4.1" to 6.0" dbh.   | \$0.08/Pole   | \$0.16/Pole       |

**SECTION 1.18 PAID PERMIT DURATION**

| <u>Value of Permit</u> | <u>Time Limit of Permit</u> |
|------------------------|-----------------------------|
| \$ 1.00 - \$ 5.00      | 3 days                      |
| \$ 5.01 - \$10.00      | 7 days                      |
| \$10.01 - \$20.00      | 15 days                     |
| \$20.01 - \$40.00      | 30 days                     |
| \$40.01 Plus           | As Indicated                |

**SECTION 1.19 PROVISIONS FOR NON-TRIBAL INDIVIDUALS HAULING PURCHASED FIREWOOD OFF THE RESERVATION**

A. Non-tribal individuals are prohibited from picking up purchased firewood in the forest or woodland areas. The following designated areas in the respective communities will be pick up points for transporting large volumes of purchased firewood off the reservation:

1. Hondah Junction

2. Whiteriver - across from BIA Fire Management Office near the livestock corrals.
3. Carrizo Junction
4. Cibecue - Police Station, or within limits of the community.

**SECTION 1.20 PERMITS FOR CONSTRUCTION PROJECTS ON THE RESERVATION**

A. All activities by any tribal or government entities which requires removal of commercial trees 5.0 inches at diameter breast height and larger shall require a permit.

B. Trees designated for removal shall be measured and marked by Bureau of Indian Affairs or Tribal Forestry personnel.

C. Prior to tree cutting operations the permittee shall pay in advance for the trees at the following authorized rates:

| <u>PRODUCT</u> | <u>STUMPAGE RATE</u> | <u>CASH BOND*</u> |
|----------------|----------------------|-------------------|
| Sawtimber      | \$100.00/MBM         | \$55.00/MBM       |
| Pulpwood       | \$ 25.00/Cord        | \$25.00/Cord      |

\* Minimum Cash Bond shall be \$40.00.

D. The cash bond shall be deposited with the Bureau of Indian Affairs Agency Superintendent to ensure all slash is properly disposed of in a manner acceptable to Bureau of Indian Affairs or Tribal Forestry. This will include burning or hauling to a proper disposal site. The Permittee is liable for all damages from the slash burning to adjacent reserve timber or property. Slash disposal shall be completed by the expiration date of permit or the bond will be forfeited.

E. The period of time for which a permit is valid shall be determined at the time the permit is issued and may vary dependent upon the needs of a particular project.

**SECTION 1.21 PROVISION FOR HARVESTING DEAD SPRUCE AND ASPEN**

A. Timber cutting permits and/or sales may be made to tribal and non-members to harvest dead spruce, aspen and other salvage species of trees. Permits shall not exceed a stumpage value per person of \$10,000 per year and will not be sold for less than \$10/MBF gross scale for dead spruce or \$5.00/cord for green or dead Aspen, or dead spruce firewood. Fireplace pellet species shall be sold at \$5.00/green ton.

**SECTION 1.22 RECOMMENDED MINIMUM SELLING PRICES FOR FIREWOOD SOLD OFF THE RESERVATION**

A. The following is the recommended minimum selling prices of various tree species sold for firewood products off the reservation; the Tribal Council may revise these prices annually by resolution without amending this ordinance.

| <u>Species</u>      | <u>Recommended Minimum Selling</u> | <u>1/2 Ton* Pickup</u> | <u>3/4 Ton* Pickup</u> |
|---------------------|------------------------------------|------------------------|------------------------|
| Oak                 | \$125/Cord                         | \$75.00                | \$95.00                |
| Shaggy Bark Juniper | \$ 70/Cord                         | \$45.00                | \$55.00                |
| Douglas-fir         | \$ 70/Cord                         | \$45.00                | \$55.00                |
| Aspen, Spruce       | \$ 65/Cord                         | \$40.00                | \$50.00                |

\* A 1/2 or 3/4 ton pickup loaded and stacked on a pickup without side boards or racks. Stacked this way a pickup will carry only a portion of a cord of wood.

B. The following estimates firewood volume for two major types of vehicles used to haul wood off the reservation:

| <u>Truck Type</u>                                 | <u>Estimated Cords</u>         |
|---|--------------------------------|
| 3/4 Ton Long Wheel<br>Base pickup with side racks | Approximately<br>1 cord        |
| 1/2 Ton Short Wheel<br>Base pickup with side rack | Approximately<br>3/4 of a cord |

**SECTION 1.23 SPECIAL USE: NON-TRIBAL MEMBERS**

A. Non-Tribal members may cut firewood only in areas designated by Tribal Forestry personnel. These areas will be on timber sales which have been recently completed. Dead and down Ponderosa pine, Douglas fir, White fir, Aspen or Spruce will be the only species allowed to be cut for firewood. Cost of permit will be \$5.00/cord. A removal ticket containing all pertinent information shall also be required to be placed on the rear of the vehicle where it is plainly visible.

B. Cutting and Hauling of firewood from these designated areas shall be authorized from 9:00 a.m. through 3:00 p.m., Monday through Thursday.

SECTION 1.24

**FINES, IMPRISONMENT, CIVIL PENALTIES, EXCLUSION FROM RESERVATION; ENFORCEMENT REMEDIES FOR PROHIBITED CONDUCT**

A. Any person, Indian or non-Indian, who is found guilty of conduct or acts prohibited by this ordinance shall be guilty of an offense and punished as follows:

**INDIAN OFFENDERS**

(i) CONVICTION OF FIRST OFFENSE: If an Indian, imprisonment for a period not to exceed twenty five (25) days, a fine of not less than Fifty (\$50.00) Dollars nor more than Two Hundred Fifty (\$250.00) Dollars, or both fine and imprisonment. In addition, any seized miscellaneous wood product shall be forfeited to the tribe.

(ii) CONVICTION OF A SECOND OFFENSE WITHIN TWENTY-FOUR MONTHS OF THE FIRST CONVICTION: If an Indian, imprisonment of not less than one (1) day nor more than fifty (50) days and a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or both fine and imprisonment. In addition, any seized miscellaneous wood products shall be forfeited to the Tribe.

**NON-INDIAN OFFENDERS**

(iii) Non-Indian violators shall be subject to prosecution pursuant to Federal trespass, the Lacey Act and other applicable federal statutes and regulations and to tribal civil penalties and remedies as follows:

(a) CONVICTION OF A FIRST OFFENSE: a civil penalty of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars and forfeiture of all seized miscellaneous wood products to the tribe.

(b) CONVICTION OF A SECOND OFFENSE WITHIN TWENTY-FOUR (24) MONTHS OF THE FIRST CONVICTION: a civil penalty of not less than Five Hundred (\$500.00) Dollars nor more than Two Thousand (\$2,000.00) Dollars and forfeiture of all seized miscellaneous wood products to the tribe.

(c) In addition to civil penalties, the court may award payment of costs associated with damage to tribal forest land, including, but not limited to, rehabilitation, reforestation, loss of future revenue, loss of productivity and damage to other forest resources.

(d) The court may also charge the trespasser/violator with payment of all reasonable costs associated with the enforcement of these regulations, beginning with detection and including all processes through prosecution and collection of the settlement; such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs and attorneys fees.

(e) Payment of civil penalties may involve collection of cash, forfeiture of real and personal property, and garnishment. Any cash and other proceeds realized from forfeiture of equipment or other goods or forest products damaged or taken in the trespass shall be applied to civil penalties and other expenses incurred by tribal enforcement agencies. After disposition of real and personal property to pay civil liability penalties and enforcement costs of the trespass or violation, any residual or left over funds shall be returned to the trespasser/violator.

**B. SEIZURE OF EVIDENCE; ISSUANCE OF CITATIONS** Tribal law enforcement agencies including Woodland Enforcement Officers acting pursuant to this ordinance may prohibit the removal of forest products from tribal land or have such forest products seized for safe keeping and use as evidence of trespass and violation of this ordinance.

(i) Whenever an individual authorized to enforce against trespass or violations of this ordinance has probable cause to believe that trespass activity has occurred or a violation of this ordinance, such law enforcement individual may seize and take possession of the products and/or equipment involved in the trespass or violation. All equipment seized shall be kept in the custody of the law enforcement agency for use as evidence unless otherwise ordered by the tribal court. Tribal agencies or individuals authorized to enforce this ordinance shall simultaneously with any seizure give written notice of the seizure to the party in possession of the products, tools or equipment involved in the trespass or violation. Such notice shall include a statement that the seizure may be appealed to the Tribal Court.

(ii) Tribal Game and Fish officers, Tribal police and Tribal Woodland Forest Enforcement personnel may issue citations giving notice to the trespasser, buyer, possessor, or violator that a trespass or violation has occurred, basis for the determination, providing notice

of the location of the tribal court and a date in which to answer the citation. The accused trespasser or violator shall be required to sign a consent for appearance, and if the individual so accused refuses to sign the consent, said individual may be arrested and taken to the Whiteriver Jail for booking and arraignment before the tribal court. Non-Indians shall be turned over to the custody of Bureau of Indian Affairs law enforcement custody.

(iii) Any firewood seized pursuant to this chapter shall be impounded in a designated yard until such time as the violator/trespasser has pled guilty or has been convicted whereupon said wood shall be distributed to designated homes for the elderly or to disabled persons in need of firewood. An inventory will be kept by the tribal enforcement agency of all wood seized and delivered with the date of delivery to elderly homes or those of disabled persons. If an accused is found innocent of the offense, any seized wood, equipment or tools shall be returned forthwith to the accused.

C. Violation of this ordinance by a non-Indian or non-member of the White Mountain Apache Tribe may result in a petition for his or her exclusion from the reservation or referral to the Bureau of Indian Affairs or U.S. Attorneys Office for prosecution in addition to the civil penalties and remedies specified herein.

**SECTION 1.25     REPEAL OF CONFLICTING CODE PROVISIONS**

Section 2.21, Tribal Criminal Code and Section 7.2(13) of the Tribal Game and Fish Code are hereby repealed and superseded by this ordinance.

**SECTION 1.26     SEVERABILITY**

If any provision of this Code, or the application thereof, is held invalid, the remainder of this code, or other applications of such provision, shall not be affected.



The foregoing Ordinance No. \_\_\_\_\_ was on \_\_\_\_\_, 1992, duly enacted by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1(f), (h), (i) of the Amended Constitution and Bylaws 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

\_\_\_\_\_  
Secretary of the Tribal Council

APPROVED:

\_\_\_\_\_  
Superintendent, Fort Apache Agency  
Bureau of Indian Affairs  
Whiteriver, Arizona