

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION  
(Approving Posting of Proposed White Mountain  
Apache Encroachment Trespass Ordinance)**

- WHEREAS**, in 1990, the Congress of the United States enacted the National Indian Forest Resources Management Act, 25 U.S.C. §3101 *et seq.* (“NIFRMA”), to provide for the management of Indian forest lands in a manner consistent with identified Tribal goals and priorities; and
- WHEREAS**, in 1993, the Congress of the United States enacted the American Indian Agricultural Resource Management Act, 25 U.S.C. §3701 *et seq.* (“AIARMA”), to provide for the management of Indian agricultural lands, including range lands, and related renewable resources in a manner consistent with identified Tribal goals and priorities; and
- WHEREAS**, NIFRMA, specifically 25 U.S.C. §3106(c), mandated that the Secretary of the Interior promulgate forest trespass regulations and to establish civil penalties for the act of illegally removing forest products from, or illegally damaging forest products on Indian forest lands and said regulations are set forth in 25 C.F.R. §163.29 and provide that Indian tribes that adopt the forest trespass regulations set forth in 25 C.F.R. §163.29 shall have concurrent civil jurisdiction with the Federal Government to enforce 25 U.S.C. §3106 and 25 C.F.R. §163.29 against any person; and
- WHEREAS**, pursuant to AIARMA, specifically 25 U.S.C. §3713(a), the Secretary of the Interior has promulgated regulations set forth in 25 C.F.R. §166.800 *et seq.* that establish civil penalties for the commission of trespass on Indian agricultural lands, and 25 U.S.C. §3713(c) of AIARMA provides that Indian tribes which adopt the trespass regulations promulgated by the Secretary shall have concurrent jurisdiction with the United States to enforce the provisions of 25 U.S.C. §3713(c) and the regulations set forth in 25 C.F.R. §166.800-819; and
- WHEREAS**, NIFRMA, 25 U.S.C. §3106(c) provides that Tribal Court judgments regarding forest trespass shall be entitled to full faith and credit in federal and state courts to the same extent as a federal court judgment obtained under that section and provides in 25 C.F.R. §163.29(j)(4) that nothing in the trespass regulation shall be construed to prohibit or in any way diminish the authority of a Tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals; and
- WHEREAS**, AIARMA, 25 U.S.C. §3713(c) likewise provides that nothing in that Act shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass and the regulations promulgated pursuant to 25 U.S.C. §3713(a) affirm the same, 25 C.F.R. §166.802(b); and
- WHEREAS**, in addition to all powers vested in the White Mountain Apache Tribe by virtue of its inherent sovereignty or by existing law, the White Mountain Apache Tribal Council has the authority pursuant to Article IV, Section 1 of the Tribe’s Constitution to, *inter*


*alia*, protect and preserve the wildlife, plant life, forest, natural resources and water rights of the Tribe, to manage all Tribal lands, timber, and other Tribal activities, to enact ordinances providing for the removal or exclusion from the Reservation of any non-member of the Tribe whose presence may be injurious to the people or property of the Reservation, and to exercise such other powers as may be delegated to the Council by members of the Tribe, or which are vested in the Tribe through its inherent sovereignty or by federal law; and

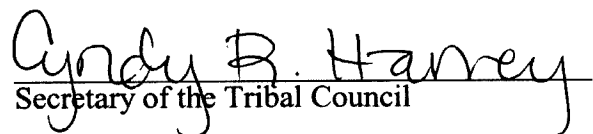
**WHEREAS**, adopting the trespass regulations promulgated by the Secretary of the Interior pursuant to NIFRMA and AIARMA is consistent with, and in furtherance of (1) the Tribe's inherent sovereign authority to protect its lands and people from trespass, (2) the Tribe's constitutional authority to exclude non-members who threaten the health and safety of Tribal members, lands and property and (3) is consistent with previous Tribal Council ordinances established under Section 1.24 of the White Mountain Apache Natural Resources Code, Chapter 6 of the White Mountain Apache Tribal Game and Fish Code, Chapter 4, Article 4, of the White Mountain Apache Livestock Code, and Chapter 5 of the White Mountain Apache Government Code providing for the exclusion and removal of non-members of the White Mountain Apache Tribe who threaten or diminish, denigrate, damage, or injure the Tribe's natural resources or the social, cultural, and economic well-being of the people of the White Mountain Apache Tribe; and

**WHEREAS**, the Tribal Council has reviewed and discussed the proposed trespass ordinance No. 233 and concludes that the adoption of a trespass ordinance which adopts 25CFR § 163.29 in the form and content attached hereto and incorporated by reference herein would greatly assist the Tribe in the protection of its trust lands from encroachment trespass by non-member Indians and non-Indian persons.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Secretary of the Tribal Council to post copies of the proposed trespass ordinance No. 223 in each District for at least ten (10) days for public comment before final action by the Tribal Council as required by Article XV, Section 2 of the Constitution of the White Mountain Apache Tribe.

The foregoing resolution was on MAY 12, 2005 duly adopted by a vote of SIX for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 223, amending White Mountain Apache Land Code, Ordinance No. 29, enacted on December 10, 1958]

**I. TITLE - Forest and Agricultural Lands Trespass Ordinance of The White Mountain Apache Tribe Adopting 25 C.F.R. §163.29 (Forests) and 25 C.F.R. §166.800 *et seq.* (Agricultural Lands).**

**Section 5.0 FOREST TRESPASS**

**A. Definitions**

1. “**Authorized Tribal Representative**” and/or “**Enforcement Agency**” means the following officials and officers duly empowered by the Tribe to enforce the provisions of this Ordinance and includes: Tribal Game Rangers, Tribal Police Officers, Tribal Forester, the Tribal Attorney, and their respective designees.
2. “**BIA**” means the Bureau of Indian Affairs within the United States Department of Interior.
3. “**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.
4. “**Forest Products**” means marketable products extracted from Indian forest, such as:
  - (A) timber,
  - (B) a timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products;
  - (C) bark;
  - (D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms and herbs;
  - (E) other marketable material, and
  - (F) gravel which is extracted from, and utilized on, Indian forest land;

5. **“Forest Resources”** means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land;
6. **“Forest Trespass”** means the removal of forest products from, or damaging forest products on Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.
7. **“Indian”** means a member of an Indian tribe;
8. **“Indian Land”** means land, title to which is held by -
  - (A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or
  - (B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;
9. **“Indian Forest Land”** means Indian lands, including commercial and non-commercial timberland 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 whether a formal inspection and land classification action has been taken.
10. **“Indian tribe”** or **“tribe”** means any Indian tribe, band, nation, 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 tribe’s reservation;
11. **“NIFRMA”** means the National Indian Forest Resources Management Act of November 28, 1990 (104 Stat. 4532, 25 U.S.C. §3101 *et seq.*), and includes regulations promulgated by the Secretary of Interior in 25CFR §169.29;
12. **“Reservation”** includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma, and in this ordinance means the Fort Apache Indian Reservation of Arizona of the White Mountain Apache Tribe

as established by Executive order November 9, 1871 and by Act of Congress June 7, 1897, (Ch.2., 30 stat. 62, 64);

13. “**Tribe**” means the White Mountain Apache Tribe.
14. “**Tribal Court**” means the trial and appellate courts of the White Mountain Apache Tribe;
15. “**Woodland**” means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

### **Section 5.10 Trespass**

(a) Trespassers will be liable for civil penalties and damages to the authorized Tribal representative/enforcement agency and the White Mountain Apache Tribe and will be subject to prosecution for acts of forest trespass.

(1) *Cases In Tribal Court.* For forest trespass actions brought in tribal court pursuant to this Ordinance, the measures of damages, civil penalties, remedies and procedures will be as set forth in 25 C.F.R. §163.29 and as adopted herein. All other aspects of a tribal trespass prosecution brought under this Ordinance will be that prescribed by the law of the Tribe.

(2) *Cases in Federal Court.* For forest trespass actions brought in Federal court pursuant to 25 C.F.R. 163.29, the measure of damages, civil penalties, remedies and procedures will be as set forth in 25 C.F.R. § 163.29. In the absence of applicable federal law, the measure of damages shall be that prescribed by this Ordinance and other applicable laws of the Tribe.

(3) Civil penalties for forest trespass include, but are not limited to:

(i) Treble damages, whenever any lawful person, without lawful authority injures, severs, or carries off from the reservation any forest product as defined in this Ordinance and in 25 C.F.R. §163.1. Proof of the Tribe’s ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of this trespass Ordinance and 25 C.F.R. §163.29, beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the Tribe or in absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be the statutory rate upon judgments as prescribed by the law of the State of Arizona. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under this Ordinance and in 25 C.F.R. §163.29(a). After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Tribe and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Tribe, the Tribal enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of trespass. Any civil penalties and damages defaulted in

consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the Reservation.

(d) Civil penalties and other damages collected under this Ordinance and 25 C.F.R. §163.29, except for penalties and damages provided in 5.10 (a)(3)(ii) and (iii) of this Ordinance and 25 C.F.R. §163.29(a)(3)(ii) and (iii), shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative/enforcement agency pursuant to 5.10 (j) of this part, or 25 C.F.R. §163.29(j), has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under this Ordinance only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through an administrative appeal to the Tribal Court of the White Mountain Apache Tribe and shall provide the name and the address of the Tribal Court to which the appeal may be filed.

If a Federal official initiates seizure under 25 C.F.R. §163.29 only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through an administrative appeal pursuant to part 2 of title 25 C.F.R., and shall provide the name and the address of the official with whom the appeal may be filed.

If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal court forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the

underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to 25 C.F.R. § 163.29(j) or 5.10 (j) of this Ordinance who is responsible for forest trespass enforcement shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or the Tribe

(g) A representative of the Secretary or authorized tribal representative pursuant to 25 C.F.R. §163.29(j) or 5.10 (j) of this Ordinance will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the possessor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in trespass may result in civil and/or criminal action by the United States or the Tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by the Tribe



exercising its concurrent jurisdiction pursuant to 25 CFR §163.29 (j) and 5.10(j) of this Ordinance.

(i) Nothing in this Forest Trespass Ordinance which adopts the Secretary's Forest Trespass regulations in 25 CFR §163.29 shall be construed to prohibit or any way diminish the authority of the Tribe to prosecute individuals under its other criminal or civil trespass laws where it has jurisdiction over those individuals.

(j) The Tribe has concurrent civil jurisdiction to enforce 25 U.S.C. §3106 and 25 C.F.R. §163.29 against any person or entity.

## **Section 6.0 Trespass on Tribal Agricultural Lands**

### **A. Definitions**

1. “**AIARMA**” means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. §3701*et seq.*), and amended on November 2, 1994 (108 Stat. 4572) and regulations promulgated pursuant thereto as set forth in 25 C.F.R. §166.800 *et seq.*

2. “**Agricultural Product**” means -

(A) crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(B) domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animal specifically raised and utilized for food or fiber or as beast of burden;

(C) forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(D) other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

3. “**Agricultural Resources**” means -

(A) all the primary means of production, including the land, soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the agricultural community; and

(B) all the benefits derived from Indian agricultural lands and enterprises, including cultivated and gathered food products, fibers, horticulture products, dyes, cultural or religious condiments, medicines, water, aesthetic, and other traditional values of agriculture.

4. **“BIA”** means the Bureau of Indian Affairs within the Department of the Interior and the Tribe acting on behalf of the BIA under 25 C.F.R. § 163.29 as adopted by this Ordinance.
5. **“District”** means one for the four voting Districts established pursuant to the Constitution of the White Mountain Apache Tribe.
6. **“Farmland”** means Indian land excluding Indian forest land that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products and maybe either dry land, irrigated land, or irrigated pasture.
7. **“Indian Agricultural Lands”** means Indian land within the Tribe’s Reservation, including farmland and rangeland, excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.
8. **“Indian forest land”** means forest land as defined in section 304(3) of the National Indian Forest Resources Management Act (25 U.S.C. §3103(3)).
9. **“Indian”** means an individual who is a member of an Indian tribe.
10. **“Indian land”** means land that is -
  - (A) held in trust by the United States for the Tribe; or
  - (B) owned by an Indian or the Tribe and is subject to restrictions against alienation.
11. **“Indian Landowner”** means the Indian or the Tribe that -
  - (A) owns such Indian land; or
  - (B) is the beneficiary of the trust under which such Indian land is held by the United States.

12. **“Indian tribe”** means any Indian tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
13. **“Rangeland”** means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed as native vegetation.
14. **“Reservation”** means the land within the exterior boundaries of the Fort Apache Indian Reservation as established by Executive Order November 9, 1871 and by Act of Congress, June 7, 1897 (ch.2, 30 Stat.62, 64)
15. **“Trespass”** means any unauthorized occupancy, use of, or action on the Reservation and tribal lands of the White Mountain Apache Tribe.
16. **“Tribal Council”** means the governing body of the tribe as provided in Article III of the Tribal Constitution of the White Mountain Apache Tribe adopted November 12, 1993.
17. **“Tribal land”** means the surface estate of land or any interest therein held by the United States in trust for the Tribe, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. §476).
18. **“Tribal law”** means the body of non-federal law that governs lands and activities under the jurisdiction of the White Mountain Apache Tribe including ordinances or other enactments by the Tribe, tribal court rulings, and tribal common law.
19. **“Tribal Realty Office”** means the duly authorized and empowered Tribal entity responsible for bringing enforcement actions under this Ordinance and 25 C.F.R. §166.800 *et seq.*
20. **“Tribe”** means the White Mountain Apache Tribe.

21. **“Trust land”** means any tract, or interest therein, that the United States holds in trust status for the benefit of the Tribe or individual Indian.
22. **“Unauthorized Livestock”** means livestock found on an open range within Tribal lands that is not authorized by the Tribe, Tribal Livestock Association or roundup bosses to graze the range where the livestock is found.

**Section 6.1. Trespass Policy**

The Tribe hereby adopts 25 C.F.R. §166.800 and will:

1. Investigate accidental, willful, and/or incidental trespass on Indian agricultural land within its Reservation;
2. Respond to alleged trespass in a prompt, efficient manner;
3. Enjoin or otherwise halt an ongoing trespass pending enforcement and disposition in accordance with the provision of this Ordinance;
4. Seize and impound unauthorized livestock;
5. Assess trespass penalties for the value of products used or removed, cost of damage to Indian agricultural land, and enforcement costs incurred as a consequence of the trespass;
6. Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

**Section 6.2 Enforcement**

1. The Tribal Realty Office shall enforce the provisions of this Ordinance unless otherwise provided herein. Enforcement of this Ordinance shall be in addition to Tribal enforcement remedies under: (1) Section 1.24 of the White Mountain Apache Natural Resources Code; (2) Chapter 6 of the White Mountain Apache Tribe Game and Fish Code; (3) Chapter Four, Article Four, of the White Mountain Apache Livestock Code; and (4) the Tribe’s Exclusionary Ordinance. The Tribe has concurrent jurisdiction with the BIA to enforce the provisions of Subpart I of Part 166, Title 25 of the Code of Federal Regulations. Pursuant to 25 C.F.R. §166.802(a), the BIA, upon request by the Tribe, will defer to the Tribe’s prosecution of trespass on Indian agricultural lands within the Tribe’s Reservation.

2. Nothing in this ordinance or in 25 C.F.R. §166.800 *et seq.* shall be construed to diminish the inherent sovereign authority of the Tribe with respect to trespass.

**Section 6.3. Notification of a Trespass Determination**

1. When the Tribal Realty Office has reason to believe that a trespass on Indian agricultural land has occurred within the Reservation, the Realty Office, within five (5) business days, shall provide written notice to the alleged trespasser, the possessor of the trespass property, any known lien holder, and beneficial Indian land owner, as appropriate. The written notice shall include the following:
  - (a) The basis for the trespass determination;
  - (b) A legal description of where the trespass occurred;
  - (c) A verification of ownership of unauthorized property, which, in the case of livestock trespass, shall include verification of brands in the Tribal and State of Arizona Brand Book;
  - (d) Corrective actions that must be taken;
  - (e) Time frames for taking the corrective actions;
  - (f) Potential consequences and applicable penalties for failure to take corrective action; and
  - (g) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by the Tribal Realty Office, Superintendent of Livestock, Tribal Forestry, or the Tribe's Wildlife and Outdoor Recreation Division.
2. If the Tribal Realty Office determines that the alleged trespasser or possessor of trespass property is unknown or refuses service of written notice, a public trespass notice will be posted at (a) the Office of the voting District nearest to the Indian agricultural lands where the trespass is occurring, (b) the U.S. Post Offices located in Whiteriver, Fort Apache, and in Cibecue, Arizona, and (c) will be published in the newspaper nearest to the Indian agricultural lands where the trespass is occurring. Notice by publication shall be considered constructive service to the alleged trespasser(s) of the public trespass notice and contents thereof.
3. Trespass notices under this Section are not subject to appeal.

**Section 6.4. Response to a Written Trespass Notice**

1. The recipient of a written notice issued pursuant to Section 6.3.1 shall either:  
(a) comply with the ordered corrective action; or (b) contact the Tribal Realty Office by telephone, but any explanation of trespass or why the trespass notice is in error must be in writing.
2. The Tribal Realty Office shall consider any written response from the recipient of a written notice, and based thereon, the Tribal Realty Office may subsequently modify or amend the written notice of trespass with respect to corrective actions that must be taken, time frames for taking the corrective actions, and potential consequences and penalties for failure to take corrective action.
3. If the Tribal Realty Office determines that it issued the trespass notice in error, the Tribal Realty Office shall withdraw the notice.

**Section 6.5. Duration of a Written Trespass**

A written trespass notice will remain in effect for the same conduct identified in the written notice for a period of one year from the date of receipt of the written notice by the trespasser, or date of publication of the trespass notice as provided in Section 6.3.2.

**Section 6.6. Actions Against Trespassers**

1. If the trespasser fails to take corrective action specified by the Tribal Realty Office, Then the Tribal Realty Office may take one or more of the following actions, as appropriate:
  - (a.) Seize, impound, sell or dispose of unauthorized livestock, or other property involved in the trespass. The Tribal Realty Office may keep seized property for use as evidence.
  - (b.) Assess penalties, damages, and costs, under Section 9. of this Ordinance and 25 C.F.R. §166.812.
  - (c.) Enjoin or otherwise halt an on-going trespass pending enforcement and disposition in accordance with the provisions of this Ordinance.

**Section 6.7 Impounding Unauthorized Livestock or Other Property**

1. The Tribal Realty Office will impound unauthorized livestock or other property determined to be a trespass upon Indian agricultural lands within the Tribe's Reservation under the following conditions: (a) where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage; or (b) when the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.
2. Any time after five (5) days of providing notice of impoundment if the trespass is not corrected.

**Section 6.8 Notification of Intent to Impound Unauthorized Livestock or Other Property if Trespass Not Corrected Pursuant to Trespass Notice.**

1. If the trespass is not corrected in the time specified in the initial trespass notice under Section 6.3.1, the Tribal Realty Office shall notify, in writing, the owner and lienholder, if known, of its intent to impound the unauthorized livestock or other property. The written notice shall provide that the impounded livestock will be sold unless the impounded livestock is redeemed prior to its sale, pursuant to the redemption procedures in the notice.
2. If the Tribal Realty Office determines that the owner of the unauthorized livestock or other property is unknown or refuses delivery of the written notice of intent to impound, the Tribal Realty Office will post a public notice of intent to sell the impounded livestock at (a) the office of the voting District nearest to the Indian agricultural lands where the trespass occurred, and (b) the U.S. Post offices in Fort Apache, Whiteriver, and Cibecue, and (c) will also publish a notice of intent to sell the impounded livestock in the local newspaper nearest to the Indian agricultural lands where the unauthorized livestock or other property in trespass is occurring.
3. After notice is given as described in Sections 6.8.1 and 6.8.2, the Tribal Realty Office will impound unauthorized livestock or other property without any further notice.

**Section 6.9 Notification of Intent to Sell Impounded Livestock or Other Property**

1. Following the impoundment of unauthorized livestock or other property, the Tribal Realty Office will provide written notice of the sale of the impounded livestock or other property to the owner, the owner's representative, and any

known lien holder. The written notice must include the procedure set forth in Section 7.00, pursuant to which the impounded property may be redeemed prior to the sale.

2. The Tribal Realty Office will provide public notice of the sale of impounded property by posting (a) at the office of the voting District nearest to the Indian agricultural lands where the property was located, and in the U.S. Post Offices in Fort Apache, Whiteriver, and Cibecue, and at the Livestock complex if the property is unauthorized livestock; and (b) publish a public notice of sale in the local newspaper nearest the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time and place of the public sale. The sale date must be at least five days after the publication and posting of notice, whichever is later.

**Section 7.0 Redemption of Impounded Livestock or Other Property**

A person may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under 25 C.F.R. §166.812, or Section 9.0 of this Ordinance and completing all corrective actions identified under Section 6.3.1 of this Ordinance.

**Section 8.0 Sale of Impounded Livestock or Other Property if Not Redeemed**

1. Unless the owner or unknown lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under Sections 9.0 and 6.3.1, the property will be sold by public sale to the highest bidder.
2. If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.
3. The purchaser will receive a bill of sale or other written receipt evidencing the sale.

**Section 9.0 Penalties, Damages, and Costs Payable By Trespassers**

Trespassers on Indian agricultural land must pay the following penalties and costs:

1. Collection of the value of the products illegally used or removed plus a penalty of double their values;
2. Costs associated with any damage to Indian agricultural land and/or property;



3. The cost associated with enforcement of 25 C.F.R. §166.800 *et seq.* or this Ordinance, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court cost, and attorney fees;
4. Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under 25 C.F.R. §166.807 or Section 6.7 of this Ordinance.
5. All other civil or criminal penalties authorized by law.

**Section 10. Determination of the Value of Forage or Crops Consumed or Destroyed**

The Tribal Realty Office will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

**Section 11. Determination of the Value of the Products or Property Illegally Used or Removed**

The Tribal Realty Office will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

**Section 12. Determination of the Amount of Damages to Indian Agricultural Lands**

The Tribal Realty Office will determine the damages to Indians agricultural lands by considering the costs of rehabilitation and vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

**Section 13. Determination for the Cost Associated with Trespass Enforcement**

Costs of enforcement may include detection and all actions taken by the Tribe through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court cost, attorney fees, and other costs.

**Section 14. Failure to Pay the Assessed Penalties, Damages and Costs**

1. The Tribe will refuse to issue any permit for use, development, or occupancy of Indian agricultural lands to any person who fails to pay any penalties, damages or costs assessed under this Ordinance.

2. The Tribe will prosecute any person who fails to pay any penalties, damages or costs assessed under this Ordinance or forward its claim to the BIA for appropriate legal action.
3. The Tribe may file an appropriate action in Tribal Court, Federal, or State of Arizona Courts to recover trespass damages.

**Section 15. Distribution of Proceeds from Assessment of Trespass Damages and Costs**

1. All amounts recovered under Section 9 of this Ordinance or 25 C.F.R. §166.812 shall be treated as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.
2. Proceeds recovered under Section 9 of this Ordinance or 25 C.F.R. §166.812 may be distributed to:
  - (a) Repair damages of the Indian agricultural land and property;
  - (b) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; or
  - (c) Reimburse the Tribe for costs associated with the enforcement of this Ordinance.

**Section 16. Deficiency Assessment**

If the Tribe does not collect enough money to satisfy the penalty assessed pursuant to Section 9 or 25 C.F.R. §166.812, the Tribal Realty Office will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received with five (5) business days from the date of receipt, the deficiency will be pursued through legal action. The Tribal Realty Office may send a copy of the notice to the Indian landowner, permittee, and any known lien holders.

**Section 17.** In addition to the Penalties, damages, and costs set forth herein, the Tribe may bring an exclusionary action against the trespasser pursuant to and in accordance with the Tribe's Exclusionary Ordinance.

**Section 18. Severability**

If any section or provision of this Ordinance, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other sections, provisions or applications

of the Ordinance which can be given effect without the invalid section or provision, and to this end the sections and provisions of this Ordinance are severable.