

TITLE 11 - LAND AND NATURAL RESOURCES

This statute was reviewed and recommended unanimously by the Land Use Committee in presentation to the General Assembly of April, 1989. It was passed at that assembly. It serves as the basis for stating the purpose, policy, and administrative efforts to be given to managing the lands of tribal members and communities from a central administrative base. Broad protection for tribal lands are formalized, giving extra credibility and empowerment to any court decisions which are called upon to make protective decisions of tribal lands. A trust statute was originally developed from a combination perspective of land and personal properties. An ad hoc legal committee was formed at the 1989 General Assembly to review this further. It was tentatively passed, subject to the approval of this ad hoc committee's recommendation to the Executive Committee. One of their earliest recommendations was to place it in a separate title. It is currently under review for final approval.

Committee duties are broadly stated. The steering committee believed this would allow direction to future committees without being too detailed and would serve as the basis for further zoning, planning, and protective statutes.

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Chapter 01. Authority and General Provisions of Administration and Structure

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Sec. 11.01.001 Findings and Policy

WHEREAS, the General Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA), finds that:

- A.** There is a need for protection and preservation of tribal/Native lands throughout Central Council territory and jurisdiction in Southeast Alaska;
- B.** Too often legal efforts to protect individuals' homesteads and allotments are inadequate and frustrated by lack of research, planning, isolation and finances;
- C.** Legal protections are inadequate or nonexistent for burial sites of cultural, archeological and heritage significance.
- D.** Alaska Native land is vital to the heritage of the tribal members of Central Council. It is the most valuable asset of the people through the Native corporations;
- E.** It is important to have legal structure in place to receive and manage bequeathed land and properties to afford them tribal protection, whether trust or governmental, as opportunities arise.
- F.** Tribal status tax benefits are beneficial to individual, as well as tribal, interests on properties used for tribal purposes, thus it is important to secure these benefits;
- G.** THEREFORE, it shall be policy of Central Council to legislate and react

this land use title which shall include statutes to best effectuate the findings above and which embody the will of the Tlingit and Haida peoples concerning the nature and scope of the protection and preservations in this title and according to the goals and objectives at

Sec. 11.01.002 Authority, Purpose and Title Statutes

- A.** WHEREAS, this land use statute is enacted pursuant to the powers and authority derived from any and all residual inherent rights to self-government; sovereign, aboriginal and possessory rights and powers; self-governing rights and powers as granted or reserved, or as otherwise claimed, pursuant to the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA, hereafter), and amendments thereto; the sovereign rights recognized by the Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543); and
- B.** FURTHER, as may be derived from any lawful exercise of Treaty, Congressional or Presidential Acts, agreements, contracts or resolutions; as included in judicial precedents; and
- C.** FOR THE PURPOSE of establishing a statute code to govern the land use policies of the CCTHITA, and
- D.** TO FACILITATE the implementation of policies consistent with the highest, best, and most beneficial use of the land and resources under tribal jurisdiction, and
- E.** TO PROMOTE the peace, safety, and general welfare of the Tlingit and Haida people and their use of these resources,
- F.** THREFORE, this Land Use Statute is hereby established and may be known by the Title and short title of Land Use Statute.

Sec. 11.01.003 Subject Matter and Territorial Jurisdiction

In conformance with applicable federal and tribal¹ law, and lawful agreements and contracts between or with individual or collective tribes the territory and jurisdiction of the Tribes shall include:

- A.** All lands, islands, waters, airspace, or any interest therein, within the boundaries of any reservation and including lands in Alaska conveyed under the Alaska Native Claims Settlement Act (ANCSA), or amendments thereto, which may be established for the Tribes, notwithstanding the issuance of any patent, including rights-of-way running through the reservation.
- B.** All dependent Alaska Native/Indian communities, including lands, islands, waters, airspace, or any interest therein as established pursuant to the Rules of Election.

¹These jurisdictions are provided for under Article I, Territory and Jurisdiction, of the Constitution of the Central Council of Tlingit and Haida Indian Tribes of Alaska.

- C. All lands, islands, waters, airspace, or any interest therein, now or hereafter held in trust status for the Tribes or any enrolled member thereof, whether inside or outside the boundaries of any established reservation, and including lands in Alaska conveyed under ANCSA.
- D. All persons, property and activities located or found within the Tribe's jurisdiction.

Sec. 11.01.004 Goals and Objectives

The goals of this Land Use Title are to control, protect and preserve the use of the land and resources under tribal/Native jurisdiction so as to promote the peace, safety and general welfare of all who may choose to reside within, or use, tribal land. The specific objectives to be implemented and enforced by the CCTHITA President, staff and the tribal courts as follows:

- A. Ensure an ecological balance compatible with the desire lifestyle of tribal members.
- B. Establish a desirable land use plan for tribal lands.
- C. Protect subsistence resources as the highest priority use of tribal lands.
- D. Protect and enhance the natural resources on tribal lands.
- E. Provide development standards which are flexible enough to stimulate creativity and variation while maintaining sufficient control to achieve the objectives of the statutes.
- F. Manage lands and resources so as to receive fair compensation for any commercial uses.
- G. Ensure that Tribal lands and resources shall not be sold except pursuant to CCTHITA Constitutional procedures.
- H. Issue permits for various uses of tribal lands, specifying, however, that all requests for leases must be brought before the President for approval.
- I. Provide for public hearings and notice procedures which shall be followed prior to any major decisions regarding land uses within the jurisdictions of the tribe(s).
- J. The Land Use Statute shall be used to support the general policies of encouraging tribal member hire and providing members with economic opportunities whenever feasible.
- K. Notice shall be given to adjacent land holders of permitted activities on tribal lands, times when they may be appropriate, and provide for posting which will give notice of restrictions of use by the general public or adjacent landowners.
- L. The President, staff, and courts shall protect all tribal assets such as, but not limited to, archeological, burial, cultural and religious sites, and to

protect and keep all tribal artifacts within the jurisdiction for the common pleasure, edification, and communal resources of the tribal members.

- M. Develop handbooks to provide strategies and education on issues such as homesite selection and subsistence protection, to enhance the opportunities for the exercise of meaningful choices on land and resource use planning.

Sec. 11.01.005 The Land Use Committee

The President of the CCTHITA shall appoint six (6) tribal members as Committee Members on the Land Use Committee according to an equitable geographic distribution plan, whose function shall be to perform long-range land use planning for the Central Council and its member people, and to develop and recommend rules and guidelines by which Central Council can implement the following policies or accomplish these purposes or such other functions as the residents may prescribe pursuant to the authority of that office.

- A. Acquire, accept, or otherwise claim, secure, and manage, by any and all lawful and appropriate means, available desired lands.
- B. Apply for trust status, tax or other exemptions, or other beneficial protection, planning and management augmentations which facilitate the highest and best use of CCTHITA tribal Native land resources.
- C. Facilitate and administer the design of a land classification system which will classify the CCTHITA land resources according to the highest and best uses.
- D. Require that management resources be available to properly manage tribal/Native land or property acquisitions.
- E. Develop and monitor an effective trespass policy for tribal/Native lands.
- F. Facilitate and administer all affairs and actions necessary and proper to, and consistent with, attainment of these purposes, policies, goals and objectives.

Sec. 11.01.006 Terms and Qualifications of Committee Members

The Committee Members shall serve staggered terms, according to whether their appointments, or predecessor, was a one (1), two (2) or three (3) year term, and shall hold office until their successors have been appointed and have qualified, except:

- A. **Terms of Initial Committee:** Three (3) of the Land Use Committee Members appointed at the 1988 General Assembly shall serve three (3) year appointments from the date of appointment. One (1) member shall serve a two (2) year appointment, to be selected from among the four (4) original appointees. Two (2) additional Committee Members may be added to serve three (3) year terms from the 1989 General Assembly.
- B. **Qualifications of Committee Members:** Qualifications of the Committee Members shall be as follows:
 - 1. Each Member shall be a resident of a community within an equitable geographic distribution plan.
 - 2. Two (2) Members shall be Assembly Delegates or members of the Executive Committee.
 - 3. Two (2) Members shall be members of Community Councils.
 - 4. Two (2) Members shall have recognized business and financial experience, but one need not be a tribal member.

Sec. 11.01.007 Vacancies, Resignations, or Removals of Committee Members

- A. **Vacancies:** If any Committee Member dies, resigns, is removed, or for other reason is unable to serve as a member of the Committee, the Tribal President shall declare that position vacant and appoint another person with the necessary qualifications within three (3) months of the vacancy, unless the Committee requests replacement sooner. The vacancy shall be filled for the balance of the unexpired term of the Member who is replaced.
- B. **Registration:** Any Member may resign at any time by delivering a written resignation to the Chair or to the Secretary. The resignation shall be effective upon receipt, unless otherwise specified by its terms.
- C. **Removal Causes:** A Member may be removed by the President of the Central Council for serious inefficiency, neglect of duty or for misconduct in office.

Sec. 11.01.008 Annual Meeting

The Land Use Committee shall meet at least annually, pursuant to current rules of the Central Council for standing committees, or in the absence of specific directions, shall be held at the call of the Chair, after adequate notice pursuant to Sec. 11.01.011.

Sec. 11.01.009 Other Meetings

Other meetings of the committee may be held at any time as necessary to carry out the functions of the Committee. A meeting other than the annual meeting may be held by teleconference other adequate notice for quorum participation per Sec. 11.01.011.

Sec. 11.01.010 Quorum

Four (4) Committee Members shall constitute a quorum. A majority of these Members present at a meeting at which there is no quorum may be resolution adjourn the meeting or make recommendations, which when ratified by the consent of the requisite number of

absent Members to constitute a quorum may serve as Land Use Committee action, unless one (1) or more absent members reserves the right to present another viewpoint at a meeting with a full quorum present, whether by teleconference or by presence of the Members.

Sec. 11.01.011 Notice of Meetings

Notice of each meeting of the Committee shall be mailed by first class mail to each Member, addressed to the residence or usual place of business, not less than five (5) or more than 20 days before the day on which the meeting is to be held, or notice may be delivered to each Member personally, by telephone, or other electronic means, or in writing, not less than two (2) days before the day on which the meeting is held. Notice of any meeting of the Committee need not be given to any Member who shall waive such notice whether before or after the meeting, or if the Member is present at the meeting.

Sec. 11.01.012 Conduct of Meetings

At all meetings of the Committee where a quorum is present, all matters shall be decided by a vote of the majority of a quorum. The Chair shall preside at each meeting, and in his absence, the Vice Chair shall preside.

Sec. 11.01.013 Record of Meetings

The Secretary shall keep, or cause to be kept, a complete and accurate record of all meetings, copies of which shall be furnished to the Committee Members and to the Central Council.

Sec. 11.01.014 Signatures

The Chair and Vice Chair of the Committee may sign such papers as the Committee may authorize for and on behalf of the Committee.

Sec. 11.01.015 Voting

Each Member of the Committee, including the Chair, shall be entitled to vote on each matter coming properly before it.

Sec. 11.01.016 Member Responsibilities

The Committee shall be responsible to an accountable to the Central Council. Their functions may include the following:

- A. **Chair:** The Chair shall be the principal executive officer of the Committee and shall preside at all meetings of the Committee. He/she may sign with the Secretary, or any other officer authorized by the Committee, all documents which the Committee has authorized to be executive in the name of the Committee. In general, the Chair shall perform all duties incidental to the office of the Chair and such other duties as may be prescribed by the Committee from time to time or by Central Council.
- B. **Vice Chair:** In the absence of the Chair, or in the event of death, inability or refusal to act, the Vice Chair shall perform the duties of the Chair and when so acting shall have all the powers of and be subject to all the

restrictions of the Chair. In addition, he/she shall perform such other duties as shall, from time to time, be assigned by the Committee.

- C. Secretary:** The Secretary shall record and maintain a full report of all proceedings of each meeting of the Committee and shall in general perform all duties as may, from time to time, be assigned to him by the Chairman or the Committee.
- D. Treasurer:** The Treasurer shall have charge and custody of, and be responsible for, all funds of the Committee and deposit all such monies in such banks or other depositories as may be designated by the Committee, establish and maintain proper books and records accounting for all receipts and disbursements, and in general, perform all the duties incident to the office of the Treasurer and such other duties as may, from time to time, be assigned by the Chairman or the Committee.
- E. Delegation:** In the case of absence or inability to act of any officer and of any person herein authorized to act in his place, the Committee may from time to time delegate the powers of duties of such officer to any other Committee Member.

Sec. 11.01.017 Adoption of Land Use Policies

- A. In General:** Land use policies of the Committee may be discussed, whether by phone, mail, or at the call of the Chair, upon approval for expenses at Central Council delegate rates if the meeting requires personal presence of the Members. Comments and votes of Committee Members may be taken by staff support personnel over the telephone, or accepted by mail when the committee is not in full meeting. Full meetings may be by teleconference or by personal presence. When a final approving vote has been made on a Statute, amendment or other modification, the document shall be submitted by the Chair to the Executive Committee to be either approved by them or submitted to the General Assembly after Executive Committee recommendations.

Sec. 11.01.018 Codification and Definitions

- A.** The definitions and construction of words and phrases of the CSC Codification Statutes, 01.01.000, et. Seq., are adopted as applicable in this Land Use Code.
- B.** Other definitions included after this section are meant to clarify applicability within the Land Use Statutes and are not meant necessarily to apply in other titles of the Code system. They apply to this statute unless the context otherwise indicates or requires.

Chapter 02. Land Uses

- Sec. 11.02.001** **Trespass**
Sec. 11.02.002 **Land Use Zones**

Sec. 11.02.001 **Trespass**

Pursuant to the stated goals and objectives set forth within this Code, and by the powers and authority which may be delegated to the Community Councils or other appointed officials, the following procedures are hereby established to be implemented to ensure against trespass and conversions of tribal lands, resources, sites and cultural or historical artifacts and assets;

- A.** Provide for monitoring the use of tribal lands by issuing permits authorized under this Land Use Statute and by procedures determined to be expedient to carrying out this duty.
- B.** Signs and maps may be posted at major entry ways accessing tribal land such as roads, rivers, and trails. Notices will be posted in public places that instruct individuals whom to contact for further information regarding land use policies.
- C.** Casual trespass that does not constitute a loss of potential revenue or any physical damage should generally not be prosecuted for trespass violations in the absence of probable cause to believe that unlawful activity may take place.
- D.** Take appropriate actions against trespass that damage and/or produce loss of resources from tribal lands or other natural resources assets, sites, or artifacts These actions may include reference to the Tribal Courts which may include the use of the Court of Elders for resolution of disputes.

Sec. 11.02.002 **Land Use Zones**

In order to accomplish the objectives, goals and policies of the Land Use Statute, and in conjunction with other tribal codes, the Land Use Committee shall recommend to the Council that tribal lands and properties may be designated appropriately as one of the following land use area classifications, or to recommend additional classifications for specific properties after further study:

- A.**
 - 1.** Residential Zone.
 - 2.** Industrial Zone.
 - 3.** Wilderness Zone.
 - 4.** Archeological Site Zone.
 - 5.** Cultural, Religious Use Zone.
 - 6.** Commercial Zone.

7. Forestry Zone.
 8. Subsistence Use Zone.
 9. Cemetery Use Zone.
- B.** Procedures are to be implemented by the Land Use Committee for effective facilitation of planning and zoning, which shall include, but not be limited to, the following:
1. Land use plan maps should be developed, adopted, or acquired for land which show the type of legal title, claim or right, whether by prescription or other claim, as well as demonstrate how specific parcels or areas of land may be used.
 2. The plan maps should define land use zones including, but not limited to, the land use areas described in this Code, as well as the alternate potential and possible uses to be made of zones. These can then be proposed for adoption as land use zones.

EXAMPLE of a definition of a zone's uses:

Wilderness Zone: The purpose of the Wilderness Zone is to retain the natural environment. The following uses shall be permitted in a Wilderness Zone.

- A.** Picnic grounds.
- B.** Hiking, non-motorized bicycles and bridle trails.
- C.** Scenic viewpoints.
- D.** Day camp area.
- E.** Subsistence gathering.
- F.** Firewood gathering may be authorized if a permit is acquired from the Administrative Committee.
- G.** Overnight camping will require a permit that stipulates conditions for sanitation.
- H.** No residences or cabins will be permitted.

Chapter 03. Authority, Citations and References

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Sec. 11.03.014	Determination of Status of Items as Communal Artifact

Sec. 11.03.001 Trust Definitions

- A. **“Allotments”** means divisions or apportionments of property, whether land or other property, and means those allotments made pursuant to law, whether Congressional Act, tribal legislative allotment, or pursuant to Tribal Court order.
- B. **“Bequest”** means a gift by will of personal property as opposed to devise, (see below).
- C. **“Conveyance”** means a transfer of title, interest or other claim to possession of property, whether of land, and land use area, or other property such as artifacts, personal property items, and regardless of the vehicle of transfer whether deed, certificate of designated beneficiary use, assignments, leases, other form of intervivos transfer, bequest, or devise.
- D. **“Devise”** means a disposition of land or “real” property by will.
- E. **“Eminent Domain”** is the power to take private property, or a method of reclaiming tribal communal property in individual use, which is exercised by the tribal government, for and on behalf of tribal members for common usage or for the protection of such property as communal property. When the exercise of eminent domain results in a taking of a prior existing and compensable use by a given tribal family, the “taking” shall be compensated, whether in rents or purchase, at a fair and just cost to the tribal community.
- F. **“Townsite Lots”** are lots within a town, community, or village, set aside for use by a specific individual or entity by a government, whether tribal, city, state or federal.

- G. **“Tribal Community Property”** is property, whether and or other property, which is commonly owned by all tribal members.
- H. **“Tribal Court”** means any of the authorized courts of the tribal community and includes the Tribal Court, Court of Elders, and Trial Court of Appeals.
- I. **“Trust”** means a right of property, land or personal, held by one party, the trustee, for the benefit of another. The designated trustee is the party, whether individual or entity, who or which has the fiduciary power and authority to manage the trust property for its protection and/or for the economic benefit to be derived from it, for another’s benefit, whether individual or and entity. Specific applications to tribal government are:
 - 1. **“Tribal Trust”** is a property right which is held and its powers exercised by the tribal government to act as trustee, for the benefit of the community of tribal members. It is a public trust in the sense that the primary beneficiary is the tribal body. It may exist from the implicit fiduciary relationship of the governing tribal sovereign to the tribal community as well as being the result of the creation of an explicit trust relationship such as may derive from a “settlement trust” under ANCSA, by agreement with Bureau of Land Management, with the Secretary of the Interior, from individuals, or by other express establishments of tribal trust.
 - 2. **“Tribal Allotment Trust Lands”** are allotted lands held in tribal trust status for the beneficial uses of designated individual, familial, or clan tribal members. The allotments may have been made either through Federal, State or Tribal allotment processes pursuant to law, whether legislative, judicial or customary Tlingit law.
 - 3. **“Trust Use Area”** means an area recognized under tribal trust management for designated individual, house, clan, moiety or tribal beneficial uses, (i.e., uses by the smallest unit to the largest unit of the tribal unit). Generally, a use area will be unlimited in the uses to which the designated beneficiary user may use it, with the exception that it is to remain inalienable, (i.e., tribal communal property), and the uses shall not lay waste to its resources. Any other restrictions or limitations in uses must be pursuant to law and recorded for notice by the tribal use area trustee.
 - 4. **“Will”** means a written expression of the desire of a person regarding the disposition of properties, usually used for distribution of property at the person’s death, but which may also be used as an inter-vivos, (i.e., between the living), conveyance, or directive, (e.g., establishing a trust or providing for oneself or another in the event of future in capacity.).

Sec. 11.03.002 Tribal Trusts: Fiduciary Responsibility

- A. **Policy and Purpose:** It shall be the policy of the tribal government and

the purpose of these ordinances on tribal trust;

1. To expressly recognize the essential implicit reciprocal and interdependent fiduciary responsibilities, privileges, and benefits inherent in tribal communal living, and
2. That all commonly owned properties are deemed to be property of a tribal trust relationship, and
3. That this relationship shall be governed by principles of accommodation to individual rights of uses and ownerships while not sacrificing the protection which only tribal communal ownership can give to communal properties. Thus, for example, ownership of unsettled allotments and townsite properties ownership will be deemed to be tribal trust property ownership to provide tribal communal protection deriving from Indian Country, reservation, inherent or quasi-sovereign status, while the lifetime beneficial uses of that land or other property shall be possessed by the parties who have traditionally claimed the possession and beneficial use.
4. It is the policy and purpose that this tribal trust property use may be conveyed by will, bequest, intervivos conveyance or intestate succession by the designated beneficial user to other tribal members and the heirs of the designated beneficial users, but
5. That tribal trust property shall be inalienable from the tribal trust ownership except by operation of law, by either the tribal government or the designated beneficial users notwithstanding and despite any restrictions of foreign jurisdictions, such as policies favoring alienability of land, which are deemed inapplicable to tribal trust land or other communal property, and
6. That these policies are to be given effects as legally binding, obligating the tribal governments to respect and protect a perpetual beneficiary user status for the designated beneficiaries.

B. Fiduciary Relationship:

1. A tribal trust fiduciary relationship shall be in effect between the tribal communal membership, as beneficial recipients, and the tribal community government as trustee of all communal properties.
2. As trustees, the governing body shall be charged with following the explicit and implicit terms of each tribal trust administered by or on behalf of the tribal communal body, the beneficial recipients, or uses, for which the specific trust property is designated. They shall direct the functions of the trustee officer.

Sec. 11.03.003 Trustee Officers, Duties and Registrations

- A. All tribal trusts with explicit terms or which are formally authorized, by law or contract, are to be registered by the tribal government trustee

officer.

- B.** Copies shall be kept on file for public reference and notice.
- C.** The trustee shall maintain and display a location map with each user's assigned number cross referenced.
- D.** The tribal trustee shall exercise fiduciary duties to protect and preserve the tribal trusts against any appropriations, takings, laws, alienation, or other actions which lay waste or dissipate lands or other tribal communal property and to assure that all designated beneficiary users interests and status are protected and preserved in perpetuity, or according to lawful limitations.
- E.** The trustee shall certify to a tribal court whether any attempted conveyance by a designated beneficiary user to another person or entity has been examined and approved as a lawful conveyance which will not abrogate any other tribal law or policy.
- F.** The trustee officer is to categorize the types, nature, and scope of all tribal trusts.

Sec. 11.03.004 Trust Use Areas

A. Trust Use Areas of Land²

- 1. Individuals.
- 2. Houses.
- 3. Clans.
- 4. Moiety.
- 5. Tribal.

B. Use Limitations (if any).

- 1. Limit on duration of use if other than lifetime.
- 2. Income distribution limitation, if less than 100% to the specific or designated individual.
- 3. Limit on type of use of land, if less than:
 - a. All uses not incompatible with tribal code.
 - b. Uses traditionally associated with the use of that particular area, or
 - c. Such uses as are reasonably adapted to current conditions, and
 - d. Such uses as do not lay waste the land or other natural or improved resources on it.

²Specific beneficiaries to be named or a designated person as agent if moiety or tribal body as whole.

4. Limit by agreement.
5. Limits by court order.

Sec. 11.03.005 Use Area Registry

- A. Designated trust use area to be registered by the tribal government trustee.
- B. Registration of all use area designated beneficiaries shall be cross-referenced alphabetically, by an area's assigned number, and by other community identifications which may be helpful for public notice.

Sec. 11.03.006 Use Area Location Maps

Location maps shall be maintained and publicly displayed in the tribal trustee's office(s) which shall display each area's assigned number for cross reference purposes.

Sec. 11.03.007 Lawful Uses of Designated Trust Use Areas

- A. All uses of a trust area shall be lawful at the discretion of the designated beneficial user which are not incompatible with tribal codes, Tribal Court orders, and as the users of that area have traditionally used such properties, or as such traditional uses are reasonably adapted to current conditions and do not lay waste the land, or other natural or improved resources on it, and which are not subject to a limitation.
- B. Any general limitations on uses of such property and governing jurisdiction shall be as decided by the tribal government through its duly elected officials and shall be as contained in these ordinances as listed at 02.44.010 Specific limitations may be pursuant to lawful tribal court order.

Sec. 11.03.008 Creation of Trusts

- A. Tribal trust may be created implicitly or expressly
- B. Implicit trusts are those which are created by implicit public trust and fiduciary duties as described in these ordinances or as retroactively found by tribal courts to have been subject to a public trust. They shall be subject to a presumption of tribal trust relationship.
- C. Explicit trusts may be created by the following methods and be subject to a presumption of tribal trust relationship.
 1. An explicit recognition of specific property, or property of a specific nature, type, or identified category as property subject to a tribal trust, creates a presumption that any property of that description is subject to the rights and duties which govern the protection and management of that property.
 2. Any person or entity consisting such a presumption shall have to prove to a tribal court by clear and convincing evidence that the particular property in issue is not properly subject to a trust relationship.
 3. Specific property, or property of a specific nature, type, or other identified category found by a tribal court to be prospectively

subject to a public trust becomes an explicit trust at the time designated by the court.

4. The tribal council may designate that specific property, or property of a specific nature, type or other identified category shall be subject to an explicit trust relationship.

D. Essential elements of the creation of an explicit trust shall be:

1. The designation of the beneficiary(s) for whom the trust is to be administered.
2. Designation of the tribal trustee as administrator,
3. That the title to the property shall pass to the trustee, by quit-claim, contract, dedication, or other,
4. Delivery to the title to the trustee, (e.g. City Farmers' Trust Co. v. Charity Organization Soc. Of City of New York, 238 App. Div. 720 265 N.Y.S. 267.

E. A trust may be created for legal purposes including, but not limited to, those to be administered for public health, educational, economic, and charitable purposes, or tribal communal property protection, whether land, property such as artifacts, historical, cemetery sites, property of ceremonial or religious significance, or other natural or other resources.

F. Tribal Contracts for Trust Responsibility and Administration

1. Any trust which is administered by the tribal trustee as the result of the contractual arrangement pursuant to the provisions of the Indian Self-Determination Act, Pub. Law 93-638, 25 USC 450 et. Seq, Section 102(1)(2) which allows tribes to contract for trust functions shall also state that it is formed pursuant to that Act and that the Federal government's obligations remain as primary trustee.
2. If the tribal trustee administers any other contractual trust arrangement, its terms shall be explicitly specified.
3. Any construction or interpretation of trust arrangements by contract shall be construed to favor the trust government, and if necessary, severance of one portion shall not void the remainder.

Sec. 11.03.009 Conveyances of Property

All conveyances of any property subject to tribal trust communal property laws shall be certified by the trustee that he/she has examined it and has found it as being in accord with tribal law, not abrogating any other tribal law or policy.

Sec. 11.03.010 Inalienability

- A. Inalienable by Designated Beneficiary User.** Property which is the subject of a tribal trust shall be deemed to be inalienable by its designated beneficiary users. However, a use may be conveyed by that beneficiary to

other tribal members by bequest or devise, or by an inter-vivos conveyance of the use upon court approval after the tribal use trustee's certification that the conveyance of the use does not abrogate any provision of tribal law and is in accord with the policies for tribal trust property.

B. Inalienability by Tribe, Exceptions

1. When a trust use area has been designated for the benefit on one of the above named designated beneficiary user units, it shall continue to their use for their lifetime, unless specifically modified or limited by agreement, or Tribal Court order.
2. The rights of a beneficial use, conveyance, or right of conveyance of use shall be given protected tribal trust status in perpetuity from alienation by the tribal government for private uses.
3. Such use, conveyance, or right of conveyance of use shall not be alienated from the beneficial user by the tribal government except for an act of eminent domain exercised for a necessary public use. Such taking shall be subject to compensation in accord with tribal law.

C. Protection from Loss to Foreign Jurisdictions. The tribal trustee shall protect the tribal trust properties against appropriations, takings, laws, policies or other actions or alienation from or of foreign jurisdictions.

Sec. 11.03.011 Descent and Distribution

A. Proof of Death of Tribal Member to Tribal Court

1. Upon proof of the death of a tribal member, the Tribal Court may be requested either by the Tribal Council, or by tribal heirs, to conduct preliminary hearings to determine the scope and nature of descent and distribution.
2. Upon proof of the death of a tribal member, the Tribal Court may be requested either by the Tribal Council, or by tribal heirs, to conduct preliminary hearings to determine the scope and nature of descent and distribution.
3. Court's findings as to the validity of a will as a record of a deceased person's desired order of distribution of personal and real property shall be a finding of record and the basis of the finding for validity shall be recorded.

B. Determination of Effectiveness of a Will

1. The Tribal Court shall determine whether a valid will may be given effect in whole or in part.
2. Effectiveness shall be conditioned upon a finding by the Tribal Court that the desired order for descent and distribution is in accord with tribal communal property rights as established by

these tribal laws and certified by the trustee.

3. If any provision, bequest, or devise of will is inconsistent with tribal communal property rights, that provision shall be interpreted and construed by the Tribal Court to provide an equitable,, just and reasonable solution of the benefit of all parties concerned.
4. The Court shall weigh factors of tribal community interest in the property against the relative harm or benefit to the individuals concerned including a strong interest in accommodation of giving effect to a will as written, if the desired order of distribution expressed in the will is or is not followed.

C. Ineffectiveness of Part of Whole of a Valid Will

1. If the Tribal Court, pursuant to its determination of effectiveness and weighing of factors as set out at 0242.040, has found that one or more provisions of a valid will cannot be given effect as expressed because tribal community interests outweigh the other factors, then the Tribal Court shall consider the potential applicability of any the following solutions to obtain a reasonable, just and equitable solution in the particular circumstances.
2. These potential solutions may be used solely or in combination, or with other solutions which may be considered by the Court in the use of its discretion in arriving at a final order.
 - a. Will financial compensation be more adequate than other solutions to compensate the individual(s) for the loss the property to communal interests?
 - b. Would a tribal trust with beneficial uses accruing to the affected individuals, who otherwise would suffer loss, be an adequate solution for them and still protect the property, which has been determined to be primarily tribal community property, from tribal communal loss of ownership or trusteeship?
 - c. Are adequate substitute properties, or property uses or use areas available to compensate the individual(s) loss of use by tribal communal use?
 - d. Are the parties involved amenable to an agreement or entering into negotiations?

Sec. 11.03.012

Wrongful Takings or Conversions of Artifacts, Burial Plots, Archeological, Cultural, Historical and Communal Properties

- A. Whoever embezzles, steals, knowingly converts to their use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to the tribal community, or entrusted to the custody or care of any officer, employee, or agent of the tribal organization; or

- B. Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another;
- C. Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another;
 - 1. If the goods are damaged the Tribal Council, or any tribal member aggrieved by the wrongful action, may bring action in the Tribal Courts.
 - 2. The Courts shall decide the compensatory value at replacement value unless the goods have an intangible, cultural, or historical value which is not compensable in money, in which case the award shall be such as the Judge and/or jury, or Court of Elders determines, but which should, at a minimum, be valued at replacement value plus actual and punitive damages.
 - 3. In any case determination, the Judge may certify questions to the Court of Elders for advisory opinions for valuation, or for advisory opinions referred to a person considered by the Court of Elders to be an expert appraiser for the type of goods.
- D. The Tribal Court may also request prosecution by State or Federal authorities under applicable laws.

Sec. 11.03.013 Historical Properties as a Public and Explicit Trust

- A. The general ordinances on tribal trust property shall be deemed to implicitly apply to all present communal property which is of historical significance as determined by factors of;
 - 1. Rarity, uniqueness;
 - 2. Material significance;
 - 3. Inability to duplicate either the quality, artwork, or the workmanship of the property;
 - 4. Age of the property, (a probability is established if the property is over 20 years old, with over 50 years old tripling the probability of historical significance on the age factor alone); and
 - 5. Such other factors as the Council or the Courts decide should bear on the historical significance of a given piece of property

- B.** A decision of the Council or the Courts that a given piece of property should be declared to be deserving of extra protection as an expressly recognized property of historical significance will place said property within the trustee's duties to register the property and protect as appropriate.

Sec. 11.03.014 Determination of Status of Items as Communal Artifact

- A.** The Tribal Court(s), with advise of the Court of Elders as needed, shall be used to determine the status of an item as an artifact belonging to a clan, moiety, or tribe as their communal property, as opposed to belonging to an individual to dispose of freely at their own will.
- B.** Any person challenging a tribal council determination of communal property status and tribal trusteeship for an artifact shall have the burden of proof to establish by clear and convincing evidence that the artifact is not communal property.
- C.** For these purposes an artifact is considered to be any tool, artwork, craftwork, weapon or other instrument or object made by human work (reference: Webster's New World Dictionary, Second College Edition, (1972)).
- D.** A determination of the status of an item as a communally owned artifact may be made on consideration of factors such as:
- 1.** Whether there had ever been a commission, or order placed, for the artifact to be made by another clan, for the commissioning clan's communal enjoyment or use as well as
 - 2.** Factors such as whether a public ceremony or other form of dedication attended the transfer or conveyance of the object.
 - 3.** Other factors to be considered may be the historical significance usually given to the nature of ownership of properties or objects of that type by the clans, moieties, or tribe(s) involved.

ADOPTED by the General Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, in April of 1989.

CERTIFY



President Edward K. Thomas

ATTEST



Tribal Secretary Harold Houston Sr.