



AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

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JEFF L. GRUBBE CHAIRMAN • REID D. MILANOVICH VICE CHAIRMAN  
VINCENT GONZALES III SECRETARY/TREASURER • ANTHONY W. PURNEL MEMBER

**Ordinance No. 5**  
**Amendment No. 2**

**TRIBAL LAND USE APPEAL ORDINANCE**

**I. GENERAL PROVISIONS**

- A. Title.** This Ordinance shall be officially known and cited as the "Tribal Land Use Appeal Ordinance," an ordinance of the Agua Caliente Band of Cahuilla Indians, and any amendments thereto. References herein to this Ordinance shall be interpreted as referring to the Tribal Land Use Appeal Ordinance.
- B. Authority.** The Tribal Council of the Agua Caliente Band of Cahuilla Indians is the legally recognized elected governing body of the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe. This Ordinance is enacted under the inherent sovereign authority of the Tribe and pursuant to sections (a), (b), (l), and (r) of Article V, of the Constitution, as well as pursuant to any applicable delegations of federal authority to the Tribe under federal law.
- C. Purpose.** It is the purpose of this Ordinance to establish and define procedures whereby the Tribal Council will receive and consider the appeal of an Appellant, as such party is hereinafter defined, who is aggrieved by a final decision of a Local Government or its Governing Body when such a decision affects the planning, zoning, development, or use of Allotted Trust Land within the Reservation.
- D. Definitions.** For purposes of this Ordinance, certain terms are defined in the subsections that follow. If not defined, terms shall be given their ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, words in the plural include the singular, and words in one gender include the other gender. The word "or" includes "and" and the word "and" includes "or." The word "shall" is always mandatory and not merely directory.
1. **"Allotted Trust Land(s)"** means real property owned by any member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or real property owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.



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2. **"Appellant"** means any aggrieved person who is also: (i) a member of the Tribe; (ii) a member of the Tribal Council; (iii) a holder of a beneficial or possessory interest in Allotted Trust Land, including, but not limited to, the heirs, devisees, or successors in interest to an original allottee(s), or a lessee; or (iv) an authorized agent of the individual(s) described in (i), (ii), or (iii) above. For purposes of this definition, the term **"aggrieved person"** means any individual(s) described in the enumeration above who is directly affected by a final decision of the Local Government or its Governing Body relating to the planning, zoning, or development of Allotted Trust Land, and who is injured or wronged by such decision.
3. **"Constitution"** means the Constitution and Bylaws of the Tribe as the same now exists or may be amended from time to time hereafter.
4. **"Governing Body"** means the governing body of a Local Government. When a Local Government is formed as a general law city or charter city pursuant to the law of the State of California, the Governing Body is the City Council of that city. When a Local Government is formed as a general law county or charter county pursuant to the law of the State of California, the Governing Body is the Board of Supervisors of that county.
5. **"Indian Planning Commission"** means the Planning Commission appointed by the Tribal Council pursuant to Ordinance No. 1, as amended, renumbered, or restated from time to time.
6. **"Local Government"** means a city, county, or similar entity existing under the law of the State of California and their respective officers, officials, and employees where said entity has entered into a land use contract with the Tribe. For purposes of this Ordinance, the term **"Local Government"** includes the following entities: (i) the City of Palm Springs; (ii) the City of Cathedral City; (iii) the City of Rancho Mirage; and (iv) the County of Riverside.
7. **"Real Property"** means the land, that which is affixed to the land, that which is incidental or appurtenant to the land, and that which is immovable by applicable law, within the exterior boundaries of the Reservation.
8. **"Reservation"** means the Agua Caliente Indian Reservation and includes all lands within the exterior boundaries of the Reservation as established by Presidential Executive Order, federal patent, or deed, and any other lands held in trust by the United States for the Tribe.



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9. **"Tribal Council"** means the duly authorized elected governing body of the Agua Caliente Band of Cahuilla Indians established pursuant to Article IV of the Constitution.
10. **"Tribe"** means the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe.

**II. APPEALS**

- A. **Appealable Matters.** Notwithstanding any provision of a zoning ordinance or similar enactment of any Local Government to the contrary, the Tribal Council on appeal may affirm, modify, or reverse any decision of a Local Government or its Governing Body in the following matters relating to the use, proposed use, or development of Allotted Trust Land:
  1. General plans and specific plans;
  2. Zoning laws and regulations;
  3. Laws and regulations that authorize an owner of Real Property to deviate from development standards otherwise applicable to the Property (*i.e.*, variances);
  4. Laws and regulations that authorize particular uses of Real Property subject to conditions not generally applicable to Real Property similarly zoned (*i.e.*, conditional use permits and other similar permits);
  5. Subdivision laws and regulations;
  6. Building, grading, and other laws and regulations related to the construction and occupancy of buildings;
  7. Design review laws and regulations;
  8. Environmental laws and regulations – except as pre-empted by the National Environmental Policy Act (NEPA);
  9. Sign laws and regulations with the exception of the regulation of Outdoor Advertising Displays (e.g., off-site billboards), as that term is defined in Tribal Ordinance No. 13, "Outdoor Advertising Displays," as amended, renumbered, or re-designated from time to time;
  10. Code enforcement or code compliance;



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11. Fee ordinances and requirements relating to processing land use and related applications; and

12. Matters directly related to the above, except as noted in Section II.C of Ordinance No. 51, Local Government Land Use Ordinance, as amended, renumbered, or restated from time to time.

**B. Form and Period for Filing Appeals.**

1. **Initiation of Appeals.** An Appellant shall initiate an appeal from a final decision of a Local Government or its Governing Body by filing in triplicate a complete Notice of Appeal form, as prescribed by the Tribal Council.

2. **Timing of Appeals.** The Appellant shall file its Notice of Appeal in the office of the Tribal Council within a period of ten (10) days from the date the Appellant receives a final decision of a Local Government or its Governing Body. The Notice of Appeal shall include a filing fee of Two Hundred Fifty Dollars (\$250.00) in cash, personal check, cashiers or certified check, money order, or bank draft, payable to the Tribe. Unless the Appellant can demonstrate to the contrary, to the satisfaction of the Tribal Council, the Appellant's receipt of a final decision from a Local Government or its Governing Body shall be deemed to have occurred three (3) days after the date appearing on the face of said written decision.

3. **Content of Appeals.** The Notice of Appeal shall clearly identify the facts and circumstances which, in the opinion of the Appellant, indicate a clear error in judgment or an action not based upon consideration of relevant factors so as to be arbitrary, capricious, or an abuse of discretion by the Local Government or its Governing Body in the matter on appeal, and how modification or reversal of the final decision of the Local Government or its Governing Body would conform to acceptable planning and zoning standards, and assist in promoting the public health, safety, convenience, and general welfare. The Tribe may reject any Notice of Appeal that does not contain all of the foregoing information.

4. **Informational Documents.** Within a period of sixty (60) days of the date of filing a complete Notice of Appeal, the Appellant of record thereon shall file, in the office of Tribal Council, the following informational documents, which shall constitute part of the appeal:



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- a. A complete duplicate copy of the record and material previously considered by the Local Government or its Governing Body, including maps, exhibits, photographs, reports, etc.
- b. Transcripts of any and all proceedings before the Local Government or its Governing Body, including study sessions, at which the subject matter on appeal was considered or discussed. A copy of the applicable minutes that the Local Government or its Governing Body has approved, in lieu of stenographic transcripts, is acceptable; provided, that such minutes are in sufficient detail to demonstrate that all points raised by the Appellant were thoroughly understood by the Local Government or its Governing Body.
- c. A written statement by the Appellant indicating where, in his or her opinion, the material required in Sections II.B.4.a and II.B.4.b above supports the modification or reversal of the decision of the Local Government or its Governing Body. This written statement may be of any length the Appellant desires, but shall be accompanied by a one (1) page summary thereof if the length of the principal statement exceeds three (3) pages.

Appellant may request, from the Tribal Council, an extension of the sixty (60) day time frame for good cause.

5. **Dismissal.** Any Notice of Appeal, or duplicate copies of the record, transcripts or minutes, and the statement by Appellant, not filed within the time limits specified in Sections II.B.2 or II.B.4 above shall be dismissed by the Tribal Council with notice being sent to the Appellant and the Local Government of such action and the reason(s) therefor.
6. **Calculation of Time.** The time in which any act provided by this Ordinance is to be done shall be computed by excluding the first day and including the last day, unless that last day falls on a day on which Tribal governmental offices are not open for regular business, in which case the last day for performing such an act shall be the first day after that last day when Tribal governmental offices are open for regular business.

### **III. TRIBAL COUNCIL ACTIONS ON APPEALS**

- A. **Referral and Study.** Upon receipt of an appeal filed in full compliance with the provisions of Section II.B, the Tribal Council may refer said appeal to the Tribal



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Planning Department and to the Indian Planning Commission for report or comment, except as follows:

1. When the Tribal Council determines that additional specialized studies are desirable to resolve the issues of an appeal, the Tribal Council may direct the Appellant to provide additional data and conclusions from qualified experts in particular fields within a period of sixty (60) days of the date of such direction, with Appellant bearing the full and total cost of such additional data and conclusions.
2. The Tribal Planning Department and the Indian Planning Commission shall have the benefit of review of additional specialized studies, prior to submitting final reports or comments to the Tribal Council.

**B. Formal Consideration.**

1. **Joint Public Meeting.** Upon receipt of an appeal filed in full compliance with the provisions of Section II.B above and receipt of informational documents, a final report or comments from the Tribal Planning Department and Indian Planning Commission, and specialized studies (if any), the Tribal Council shall attempt to schedule at least one joint public meeting with the applicable Governing Body when the final decision of the Local Government or its Governing Body is the subject of the appeal. In attempting to schedule the joint public meeting, the Tribal Council shall send the applicable Governing Body a written joint meeting request that provides the name of the Appellant, describes the nature of the appeal, and proposes dates, times, and locations to hold the joint public meeting. The Governing Body shall respond in writing to the Tribal Council's request for a joint meeting within thirty (30) days of the date of the Tribal Council's written request. Notwithstanding the foregoing, a Local Government may waive its right to participate in the joint public meeting by either: (i) providing the Tribal Council written notice of its desire to waive the joint public meeting requirement; or (ii) failing to respond within thirty (30) days of the date of the Tribal Council's written request to hold a joint public meeting. If a Local Government waives its right to participate in a joint public meeting, it waives its right to a joint public meeting prior to a final Tribal Council decision on the appeal. If a Local Government has not waived its right to participate in a joint public meeting, the Tribal Council shall, prior to a final Tribal Council decision on the appeal, attend at least one joint public meeting with the applicable Governing Body on a date, and at a time and location, mutually acceptable to both the Tribe and Local Government.



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At this joint public meeting (or Tribal Council meeting if a Local Government has waived its right to a joint meeting), the Appellant and his or her counsel or representative may be heard, and comments of the general public on the issues may also be heard, provided that such public comment supplies new and pertinent information not previously included in the record of the Local Government or its Governing Body. Comments of the general public shall be subject to reasonable restrictions, which might be imposed by the Tribal Council to limit the length of the meeting and to avoid repetition of information already in the record.

2. **Publication.** The Local Government shall cause to be published the date, time, place, and purpose of the joint public meeting with the Tribal Council, at least one time in a newspaper of general circulation in the area of jurisdiction of the Local Government, and at least ten (10) days prior to the date of said meeting.
- C. **Decision by Tribal Council.** The Tribal Council shall make a decision affirming, modifying, or reversing the prior decision of the Local Government or its Governing Body on appeal, either at the required joint public meeting with the Governing Body (or Tribal Council meeting if a Local Government has waived its right to a joint meeting), or within a period of thirty (30) days thereafter.
  1. The decision of the Tribal Council shall be in writing and effective on the date thereof, with copies mailed to the Appellant and to the affected Governing Body.
  2. Any decision of the Tribal Council, which modifies or reverses the previous decision of the Local Government or its Governing Body on appeal, shall specify wherein there was a clear error in judgment or an action not based upon consideration of relevant factors so as to be arbitrary, capricious, or an abuse of discretion on the part of the Local Government or its Governing Body, and wherein such modification or reversal will conform to acceptable planning and zoning standards and promote the public health, safety, convenience, and general welfare through productive use of the Allotted Trust Land involved.
  3. Where appropriate, the Tribal Council decision on an appeal may include conditions affecting use and development of the Allotted Trust Land involved.
  4. The decision of the Tribal Council on any appeal filed pursuant to this Ordinance shall be final. Thereafter, any permit or other similar entitlement or measure that a Local Government or its Governing Body issues in furtherance of the use of the subject Allotted Trust Land shall only be issued in accordance with the final decision of the Tribal Council on the appeal.



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**IV. MISCELLANEOUS PROVISIONS**

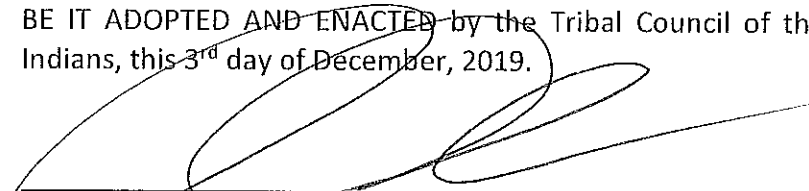
- A. Environmental Compliance.** The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a "Major Tribal Action" requiring the preparation of an environmental assessment or an environmental impact statement.
- B. Validity.** If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.
- C. Sovereign Immunity.** Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity.
- D. Amendment.** The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.
- E. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Tribal Council at a regularly scheduled meeting of the Tribal Council.
- F. Prior Inconsistent Law.** Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.
- G. Publication.** Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.







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BE IT ADOPTED AND ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 3<sup>rd</sup> day of December, 2019.

  
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Jeff L. Grubbe, Chairman

  
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Reid D. Milanovich, Vice-Chairman

  
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Vincent Gonzales III, Secretary-Treasurer

  
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Anthony W. Purnel, Council Member

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Vacant

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom, 4 constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 3<sup>rd</sup> day of December 2019; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 3-0-0 and that said Ordinance has not been rescinded or amended in any way.

  
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Vincent Gonzales III, Secretary-Treasurer