

**AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL**

**RICHARD M. MILANOVICH CHAIRMAN • JEFF L. GRUBBE VICE CHAIRMAN  
KAREN A. WELMAS SECRETARY/TREASURER • VINCENT GONZALES III MEMBER • ANTHONY J. ANDREAS III MEMBER**

**ORDINANCE No. 7  
Amendment No. 1**

**TRIBAL ORDINANCE REGULATING USE OF LANDS  
WITHIN THE BOUNDARIES OF THE  
AGUA CALIENTE INDIAN RESERVATION  
FOR PUBLIC UTILITY PURPOSES**

**ARTICLE I – STATEMENT OF PURPOSE**

This Ordinance has the following purposes:

- (A) To insure and promote the health, welfare, and safety of the members of the Agua Caliente Band of Cahuilla Indians through controlling land use and regulating development of all the lands within the exterior boundaries of the Agua Caliente Indian Reservation.
- (B) To protect the present and traditional character of the Agua Caliente Indian Reservation for the benefit of the members of the Agua Caliente Band.
- (C) To insure the quality of the environment of the Agua Caliente Indian Reservation for the members of the Agua Caliente Band by restricting the use of the lands within the exterior boundaries of the Agua Caliente Indian Reservation by public utility projects which do not directly benefit and serve the members of the Agua Caliente Band.
- (D) To promote the orderly growth and development of the Agua Caliente Indian Reservation.



## ARTICLE II – DEFINITIONS

For the purposes of this ordinance the following definitions shall apply:

- Section 2.1. "Public utility project" shall mean any utility project or public works project, including but not limited to railroads, highways, electrical transmission lines, telegraph or telephone lines, pipelines, canals, aqueducts, water lines, sewage systems, flood control projects, and/or rapid transit projects. As defined herein "public utility project" does not include those individual service or distribution facilities providing utility service to the lands within the boundaries of the Agua Caliente Indian Reservation.
- Section 2.2. "Agua Caliente Band" or "Band" shall mean the Agua Caliente Band of Cahuilla Indians, a federally recognized tribe of Indians, acting through its duly constituted Tribal Council.
- Section 2.3. "Land use authorization" shall mean any right-of-way, easement, land use permit, lease, or other form of permission which grants any right to use or cross lands within the boundaries of the Agua Caliente Indian Reservation.
- Section 2.4. "Agua Caliente Indian Reservation" or "Reservation" shall mean those lands within the exterior boundaries of the Agua Caliente Indian Reservation, as that Reservation was established through: (1) Executive Order of President U.S. Grant (May 15, 1876), (2) Executive Order of President Rutherford B. Hayes (September 29, 1877), (3) Executive Order of President Grover Cleveland (May 14, 1896), (4) Executive Order of President Theodore Roosevelt (October 29, 1906), (5) Executive Order of President William H. Taft (January 5, 1911), (6) Executive Order of President Warren G. Harding (March 29, 1923), and (7) the Mission Indian Relief Act (Act of Congress of January 12, 1891; 26 Stat.



712), which are held in trust by the United States for either the Band itself, or for individuals.

Section 2.5. "Non-conforming use" shall mean a land use that is in existence as of the date of adoption of this Ordinance which does not conform to the regulations of this Ordinance. To be in existence as of the date of the enactment of this Ordinance, such use must have been completed and in being rather than in the process of completion.

Section 2.6. The "Tribal Council" shall mean the duly elected Tribal Council of the Agua Caliente Band of Cahuilla Indians.

#### ARTICLE III – STATEMENT OF FINDINGS

The Tribal Council hereby finds, determines, and declares the following facts:

Section 3.1. The Agua Caliente Indian Reservation was established for the exclusive use and benefit of the Agua Caliente Band and its members.

Section 3.2. The lands within the exterior boundaries of the Agua Caliente Indian Reservation are and have been crossed by an Interstate Highway, railroad tracks and rights-of-way, numerous electrical transmission lines, numerous pipelines, and other public utility projects, which projects occupy lands that were set aside for the sole use and benefit of the Agua Caliente Band and its members and preempt the use of such lands for the use and benefit of the Agua Caliente Band and its members.

Section 3.3. The proliferation of the various public utility projects on the Agua Caliente Indian Reservation and the use of the Agua Caliente Indian Reservation as a utility and transportation corridor have had a negative impact upon the said Reservation and are detrimental to the health, safety, and welfare of the members of the Agua Caliente Band as well



as to the present and future interests of the Band and its members.

Section 3.4. The land use authorizations for the many public utility projects crossing the Reservation lands extend, in most cases, for many years in the future, during which period the Band and its members will continue to suffer the adverse impacts and effects of these projects.

Section 3.5. The use of the lands of the Agua Caliente Indian Reservation for public utility projects is contrary to the purposes for which the Agua Caliente Indian Reservation was created and interferes with the use of the Agua Caliente Reservation by the Band and its members.

Section 3.6. It would be detrimental to the interests of the Band and its members to allow any additional public utility projects to pass within the exterior boundaries of the Agua Caliente Indian Reservation unless those public utility projects will provide direct service and tangible benefits to the Band or its members.

#### ARTICLE IV – USE OF THE AGUA CALIENTE INDIAN RESERVATION FOR PUBLIC UTILITY PROJECTS

The following regulations shall govern the use of the lands within the exterior boundaries of the Agua Caliente Indian Reservation for Public Utility Projects:

Section 4.1. The lands within the exterior boundaries of the Agua Caliente Indian Reservation may not be used for public utility projects except as provided in this Ordinance.

Section 4.2. Public utility projects in existence on the date of the adoption of this Ordinance are hereby declared to be non-conforming uses under the terms of this Ordinance for the duration of their land use authorizations.



- Section 4.3. Any alterations of existing land use authorizations which provide for additions to or changes in the land use authorizations for public utility projects which are in existence on the date of adoption of this Ordinance shall be subject to the provisions of this Ordinance.
- Section 4.4. Land use authorizations for any public utility projects in existence at the time of the adoption of this Ordinance shall be subject to the provisions of this Ordinance at the expiration of their current land use authorizations.
- Section 4.5. If an applicant desires to renew or otherwise extend the land use authorization for any existing public utility projects which are non-conforming uses under the terms of this Ordinance, the extension or renewal thereof shall be granted pursuant to the procedures set forth below for the granting of a Conditional Use Permit.
- Section 4.6. A non-conforming use shall be deemed discontinued or terminated under the terms of this Ordinance at such time as (1) its land use authorization expires and is not renewed or extended; (2) it is abandoned for a consecutive 2-year period; (3) any term or condition of the land use authorization is violated or not followed; (4) the land is not used for its authorized purpose for a consecutive 2-year period; or (5) its right-of-way grant is terminated pursuant to the provisions of Title 25 of the Code of Federal Regulations, Section 161.19.
- Section 4.7. No new or altered public utility projects shall be built or allowed to operate on the Agua Caliente Indian Reservation unless a Conditional Use Permit is granted pursuant to the procedures set forth below.

#### ARTICLE V – CONDITIONAL USE PERMITS



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Section 5.1. No new or altered public utility projects shall be allowed to operate on the Agua Caliente Indian Reservation pursuant to currently existing land use authorizations or pursuant to any future land use authorization unless a Conditional Use Permit is granted by the Tribal Council pursuant to the procedures set forth in this Article.

Section 5.2. Any applicant desiring permission to cross or otherwise use the lands within the exterior boundaries of the Agua Caliente Indian Reservation for a public utility project or to alter an existing project must make written application to the Tribal Council for a Conditional Use Permit for said project at the same time while applying for land use authorization. Said written application shall be accompanied by application fees in the amount set by the Tribal Council pursuant to Section 5.13, below, and must include the following information:

- a. Description of the proposed project;
- b. Explanation of the direct benefit to be realized or gained by the Band or its members through allowing the project to use or cross lands within the exterior boundaries of the Agua Caliente Indian Reservation;
- c. Exact location of the proposed project, including a map thereof;
- d. Effect of the project on land uses of those lands adjacent to the proposed utility project;
- e. Effect of project on health and safety of persons living or working in vicinity of the project;
- f. Amount of land to be used for proposed project;
- g. Compensation to be offered to the allottee(s) or Band for the use of land for the proposed project;



- h. Any other information desired by the Tribal Council that is included on the application for a Conditional Use Permit; and
- i. Any other relevant information.

Section 5.3. After said written application for a Conditional Use Permit is submitted to the Tribal Council, the Tribal Council shall determine:

- a. Whether the public utility project will provide a direct and tangible benefit to the Band or its members;
- b. Whether the project is in the general welfare and for the convenience of the members of the Agua Caliente Band;
- c. Whether the project will promote and not have detrimental effects on the interests, health, safety, comfort and general welfare of persons residing on the Agua Caliente Indian Reservation;
- d. Whether the use will not adversely affect adjoining lands.

Section 5.4. If the Tribal Council by a majority vote makes an affirmative finding on each of the factors listed in Section 5.3, and determines, in addition, that it would be in the best interests of the Band and its members to grant a Conditional Use Permit for the said public utility project, then the Tribal Council may grant conditional use status to the public utility project. Prior to reaching its decision, the Tribal Council shall also solicit the views and input of the allottee(s) whose land is involved, which shall be considered in the decision-making process.

Section 5.5. The Tribal Council shall require that such conditions be placed on the Conditional Use Permit as are necessary and in the best interests of the Band.



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- Section 5.6. If the Tribal Council does not make affirmative findings on all the factors listed in Section 5.3, then the sponsor of the utility project shall be advised that the Conditional Use Permit shall not be granted. The decision of the Tribal Council shall be final and non-appealable.
- Section 5.7. A Conditional Use Permit shall issue without limitation of term so long as the land continues to be used for its authorized purpose in compliance with the terms of the Conditional Use Permit.
- Section 5.8. If a public utility project is not constructed within the timeframe stated on the permit, or if no timeframe is stated, then at the expiration of one (1) year following the granting of a Conditional Use Permit, said Conditional Use Permit automatically shall be deemed to have expired.
- Section 5.9. Any Conditional Use Permit may be revoked by the Band acting through its Tribal Council if any of the conditions or the terms of such permit are violated. If the Tribal Council finds that such a violation has occurred, it may either revoke the permit or give written notice of the violation to the permit holder. Said notice shall specify the violation and give the permit holder a prescribed time in which to correct the violation or appear before the Tribal Council and show that there is no violation or that additional time is necessary to make the correction. After a hearing on the matter, the Tribal Council may either revoke the permit or at its option give the permit holder a specific amount of time to cure the violation.
- Section 5.10. If any modification of the utility project Conditional Use Permit is necessary, then the applicant shall file a new application for a Conditional Use Permit in accordance with the provisions of this Article.
- Section 5.11. If the public utility project for which such a Conditional Use Permit has been granted has ceased to operate or has been





suspended for one (1) year, the Band, acting through its Tribal Council, may revoke the Conditional Use Permit.

Section 5.12. No land use authorization shall be granted on Tribal land for a public utility project unless that project has been issued a Conditional Use Permit by the Tribal Council.

Section 5.13. The Tribal Council may set non-refundable fees to be paid to the Band by the applicant upon submission of the application for a Conditional Use Permit. These fees shall be set at an amount sufficient to cover the costs to the Band of reviewing and analyzing the application as well as processing the application.

#### ARTICLE VI – EFFECTIVE DATE AND AMENDMENT

Section 6.1. This Ordinance shall take effect immediately upon passage and its publication in a newspaper of general circulation within Riverside County.

Section 6.2. This Ordinance may be amended as necessary by the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

Handwritten signature of Richard M. Milanovich in black ink.

Richard M. Milanovich, Chairman

Handwritten signature of Jeff L. Grubbe in black ink.

Jeff L. Grubbe, Vice – Chairman

Handwritten signature of Karen A. Welmas in black ink.

Karen A. Welmas, Secretary/Treasurer

Handwritten signature of Vincent Gonzales III in black ink.

Vincent Gonzales III, Member

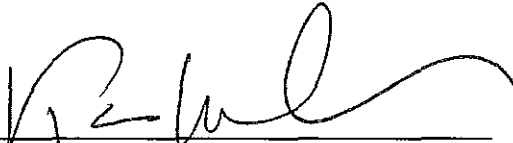
Handwritten signature of Anthony Andreas III in black ink.

Anthony Andreas III, Member



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I, the undersigned, the Acting Secretary of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 11<sup>th</sup> day of January 2011; that the foregoing ordinance was duly adopted at such meeting by the affirmative roll call vote of 4-0-0 and that said ordinance has not been rescinded or amended in any way.

  
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Karen A. Welmas, Secretary/Treasurer