

TITLE 61

NATURAL RESOURCE MANAGEMENT CODE

TITLE 61 - NATURAL RESOURCE MANAGEMENT

61.01 Policy Findings

61.01.010 Findings.

(a) From time immemorial, the Quinault Indian Nation has conserved and protected the invaluable fish, wildlife and natural resources subject to its jurisdiction from waste and excessive exploitation.

(b) The Quinault Indian Nation has inherent sovereign powers to protect and manage lands and natural resources in accordance with its Constitution, and to protect its cultural resources including, but not limited to soil productivity, water resources, water quality, air quality, forest resources, and mineral and other subsurface resources, and desires to do so through this Title.

(c) The Quinault Business Committee hereby finds that the natural resources on lands within its jurisdiction have significant cultural, economic, spiritual, subsistence, and religious importance to the people of the Quinault Indian Nation; that single species management is inconsistent and incompatible with its objectives to protect the integrity of ecosystems and maintain a proper balance between utilization and preservation of all species and all natural resources; and that it is in the tribal and the public interest that natural resources be managed consistently with the best available science and traditional ecological knowledge, and consistent with traditional and cultural values and uses.

(d) The Quinault Business Committee finds that a properly managed forest products industry is of prime importance to the Quinault Indian Nation.

(e) The Quinault Business Committee finds that forest products are an important resource; that they provide jobs and income for residents; that forest products are regularly stolen from Indian

forest lands and landowners within the Reservation, and that such thefts deprive the Reservation economy of jobs and income; and that this Title and regulations adopted pursuant to it are necessary and appropriate to protect forest products.

(f) The Quinault Business Committee finds that protection and maintenance of forest roads is critical to a viable forest products industry, to provide access to resources within the Reservation, to provide protection of clean water for fish, wildlife and the public, and to promote the health, safety and welfare of the Quinault people and residents of the Reservation.

(g) The goals of this Title include, but are not limited to:

(1) Development, maintenance, and enhancement of land under the jurisdiction of the Quinault Indian Nation in a perpetually productive state in accordance with the principles of sustained utilization and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, site preparation, reforestation, forest stand improvement, and other forest practices.

(2) Recognition of the need to stabilize and balance the ecosystems by reasonable long-range controls on the timing of forest harvest activities, and through management of all natural resources in consideration of all species.

(2) Protection of air, water, forest soils, forest ecosystems, aquatic and terrestrial habitats, and other natural resources by utilizing best available science and practices.

(3) Protection and enhancement of fisheries resources, wildlife, sensitive areas, and locations having traditional cultural significance.

(4) Recognition and achievement of the requirements and objectives set out in the National Indian Forest Resources Management Act of 1990 (25 U.S.C. § 3101 *et seq.*) and the

regulations adopted thereunder at 25 C.F.R. Part 163.

61.02 Jurisdiction/Administration

61.02.010 Jurisdiction.

(a) This Title shall be applicable to all lands and all persons acting within the boundaries of the Quinault Indian Reservation, and to all other lands held in trust or restricted fee status by the United States for the Nation or its members, except as otherwise provided by federal law.

(b) Pursuant to Secretarial recognition of tribal laws in 25 C.F.R. § 163.4, subject to the Department of Interior's fiduciary and trust responsibilities and obligations to protect Quinault Indian Nation treaty and natural resources, and unless otherwise prohibited by Federal statutory law, the Secretary of Interior and its Bureau of Indian Affairs shall comply with Nation laws and regulations pertaining to Indian forest land, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(1) Assistance in the enforcement of such laws;

(2) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(3) Upon the request of the Nation, the appearance of such in Nation forums.

61.02.020 Administration.

The Quinault Division of Natural Resources staff and Nation-authorized commissioned law enforcement officers shall administer this Title. The Division, through its Director, is authorized and empowered to adopt such regulations and forms as deemed necessary to implement the objectives and purposes of this Title, not to exceed the scope or substance of this Title. The

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Enacted: October 23, 1995

Amended: November 28, 2018

Director will convey said adopted regulations to the Quinault Business Committee at its next regularly scheduled meeting. The Quinault Business Committee reserves ultimate authority to modify or rescind such regulations.

61.02.030 Inspection — Right of Entry.

(a) The Division shall make inspections of forest lands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this Title and its regulations.

(b) Any authorized representative of the Division shall have the right to enter upon land under the jurisdiction of the Quinault Indian Nation at any reasonable time to enforce the provisions of this Title and regulations adopted pursuant to it. All permits issued pursuant to this Title will specify that right.

(c) None of the entries provided for herein shall constitute trespass.

61.02.040 Forest Management Plan.

The Quinault Indian Nation and Bureau of Indian Affairs manage forestry activities according to an approved Forest Management Plan (“FMP”) for Indian forest land and Nation-owned lands within the Quinault Indian Reservation pursuant to the National Indian Forest Resources Management Act of 1990, which requires that all management activities on Indian forest lands be consistent with an approved FMP. The FMP includes requirements, restrictions, strategies and best management practices to be followed in the management of the Indian forest land, and provides direction on how these strategies and practices are to be implemented for all forest resource management activities. The FMP works hand in hand with this Title and regulations adopted pursuant to it, however, the FMP does not apply to non-Indian fee lands within the Reservation. This Title provides the regulatory framework for issuing permits for natural resource practices

consistent with the requirements in the FMP, as well as enforcement of the requirements of this Title and regulations adopted pursuant to it.

61.03 Definitions

61.03.010 Definitions.

Abandonment, when referring to a pit from which minerals are extracted, means preparing a pit for some extended period of non-use. This abandonment can be temporary for periods up to five (5) years, or permanent for inactive periods exceeding five (5) years. Temporary abandonment requires that the site be left in a safe condition. Permanent abandonment means the site shall be contoured and replanted with commercial tree species at levels consistent with applicable silvicultural standards.

Bog means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water.

Business day means days the Quinault Indian Nation administrative offices are open for business, not including weekends, federal and Quinault holidays, and days the Nation is closed more than four hours for emergencies or as authorized by the President of the Nation.

Cedar salvage means the harvest of cedar from dead and downed cedar logs or stumps. Cedar salvage does not include the harvest of snags. Cedar salvage is also used as a noun referring to the harvested material.

Chemicals means substances applied to forest lands or water to accomplish specific purposes and

includes herbicides, pesticides, insecticides, rodenticides, plant growth regulators, fungicides, fertilizers, desiccants, fire retardants when used in controlled burning, repellents, oil, dust-control agents (other than water), salt and other materials that may present hazards to the environment.

Class of forest practices. There are four classes of forest practices created by this Title under section 61.05.010.

Coastal Bluff means an escarpment or steep face of rock, decomposed rock, or soil resulting from erosion, faulting, or folding of the land mass that has a vertical relief of ten (10) feet or more along the Pacific Ocean coastline.

Commercial means having value and suitable for purchase or sale.

Designated agent means the individual representing the Operator on-site in his or her absence.

Division means the Quinault Indian Nation Division of Natural Resources or its successor.

Emergency means an immediate threat to life, public or private property, or an immediate threat of damage to natural resources.

Enforcement officer means a commissioned law enforcement officer authorized by the Quinault Indian Nation to enforce Title 61.

Estuarine Embayment means a protected coastal body of water with an open connection to the sea in which saline sea water is measurably diluted by fresh water including tidal rivers, bays, lagoons and coves.

Forest biomass means material from trees and woody plants that are by-products of forest management, ecosystem restoration, or hazardous fuel reduction treatments on forest land. Although stumps are a by-product of these activities, only those removed for the purpose of road and landing construction, forest health treatments, or conversion activities may qualify as forest biomass.

Forest or forest land means, consistent with 25 C.F.R. § 163.1, forest land also 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 (10) percent tree crown cover, and is not developed or planned for exclusive non-forest resource use. Forest land includes forest roads used to access forest land.

Forest management deduction means a percentage of the “gross proceeds” as defined in 25 CFR §163.25 (b), from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. § 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

Forest practice means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing forest products from forest land, including but not limited to forest road construction and maintenance, reforestation, pre-commercial thinning, and use of chemicals on forest land. Forest practice does not include preparatory work such as nursery operations, appraisals, tree marking, surveying and road flagging, and ancillary removal of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products.

Forest product means merchantable products extracted from forest land and Indian forests, such as: trees, tree products, including lumber, logs, and pulpwood; bark; Christmas trees; standing/downed dead wood; stumps; specialty wood; grasses; brush; branches; firewood; berries; peat moss; mosses; mushrooms; herbs; and minerals, including oil and gravel, that is extracted from forest land.

Forest road means a non-paved road within the Quinault Indian Reservation, except the West Boundary Road.

Forested wetland means any wetland or portion thereof that currently has, or at maturity will have, a crown closure of thirty (30) percent or greater.

Hazard tree means dead or dying trees of any height, dead parts of live trees, or unstable live trees due to structural defects or other factors that are within striking distance of a road or personal property, or presents an imminent personal safety hazard, as confirmed by Division staff. Harvest or cutting of hazard trees is deemed a Class II forest practice.

Holiday means holidays recognized in the Nation's Human Resources Manual.

Hydraulic Fracturing means the forcing open of fissures in subterranean rocks by introducing liquid at high pressure, especially to extract oil or gas.

Hydraulic Project means the performance of any work or activities within two hundred (200) feet of the ordinary high water mark of a water body.

Hydraulic Project Approval (HPA) means a written approval in a Notice of Decision issued by the Division of Natural Resources authorizing work within two hundred (200) feet of the ordinary high water mark or ordinary high tide line of a water body. The Notice of Decision may provide conditions for protection of fish and wildlife potentially impacted by the proposed project.

Indian forest land means Indian land, including commercial, non-commercial, productive and non-productive forestland and woodland and roads, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

Indian land means land title that is held by: 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 by 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.

Marine shoreline protection strip means three hundred (300) feet of land measured horizontally and landward of and parallel to the Pacific Ocean coastline along coastal bluffs, or the ordinary high tide line where no coastal bluff exists, or parallel to coastal wetlands, marshes, estuaries or estuarine embayments.

Merchantable means having value and suitable for purchase or sale. Merchantable is synonymous with “commercial.”

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to sand, gravel, pumice, sphagnum (peat) moss, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral or subsurface geologic material except water.

Mining means the science, technique, and business of mineral development, including, but not limited to: opencast work, underground work, in-situ leaching, or other methods directed to severance and treatment of minerals or other geological materials, including but not limited to sphagnum (peat) moss, oil, coal, methane, oil shale, gemstones; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered “mining.”

Minor Forest Product means merchantable forest products including but not limited to downed dead wood, stumps, specialty wood, Christmas trees, bark, grasses, brush, branches, firewood, berries, mosses, mushrooms, herbs, specialty wood, and like forest materials.

Minor Forest Product Harvest means harvest of minor forest products.

Nation means the Quinault Indian Nation.

Natural resource means forest land, forest products and minor forest products, non-merchantable forest products and minor forest products, soil, surface and ground water, air quality, fish and shellfish, and wildlife.

Oil means all non-gaseous hydrocarbon substances other than coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Operator means any person engaging in and responsible for forest practices on forest land.

Reservation means the land and waters within the exterior boundaries of the Quinault Indian Reservation, as established by the Treaty of Olympia, 12 Stat. 971, and the Executive Order dated November 4, 1873 (I Kapp. 923), and all lands added thereto.

Rock means sand, gravel, pumice, and rock used for building roads or other infrastructure.

Snag means a standing dead or dying tree of at least ten (10) feet of height and diameter at breast height of ten (10) inches measured from four and a half (4.5) feet above the root collar on the uphill side. Standing in this instance means having a lean angle less than forty-five (45) degrees from vertical. Dying in this instance means having outward signs that mortality will take place within ten years, including but not limited to severe loss of crown, presence of insects or pathogens, evidence of widespread woodpecker boring in the bark, distress cone crops, extensive cambial damage, chlorosis and shortening of needles, severe reduction in growth, and/or root dieback or disruption.

Specialty wood means Englemann spruce, Sitka spruce, big leaf maple, cedar or western red alder that is in logs, chunks, slabs, stumps, or burls; is capable of being cut into a segment that is without

knots in a portion of the surface area at least nineteen inches long and seven and a one-quarter inches wide when measured from the outer surface toward the center, and is greater than one and three-quarter inches thick.

Stumpage, as used to determine treble damages for trespass, means the fair market value minus production costs, with no allowance for risk or profit, as established by regulations adopted under this Title.

Stumpage, as used in the context of contract sales of forest products, means the fair market value of timber or other forest products as it remains uncut. Stumpage is appraised through a residual value approach by subtracting from the selling value of the forest products the sum of estimated or actual operating costs and margins for profit and risk.

Timber salvage means removal of standing dead or downed trees, or stands with imminent mortality, having commercial value, or the removal of snags. This includes windthrown trees and logs. Salvage in this instance does not include cedar salvage.

Trespass means the removal of forest products from, or damaging forest products on, forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on forest land resulting from activities under contracts or permits or from fire.

Unauthorized cutting means trespass.

Water body means water that collects on the surface of the ground to form a geographical feature, including saltwater, streams, rivers, lakes, ponds, and wetlands.

Wetland means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include

swamps, marshes, bogs, and similar areas.

61.04 Regulations

61.04.010 Regulations.

- (a) When necessary to accomplish the policies and goals in this Title, and to implement the provisions of this Title, the Director of the Division of Natural Resources will promulgate regulations that will establish the standards for the management of natural resources, including but not limited to, application fees and/or bond requirements, forest road management, use of chemicals, management of invasive species, fish and wildlife protection, soil protection, air quality regulation and protection, water quality regulation and protection, and water resource regulation and protection, including the necessary procedures to achieve the policies and goals of this Title. Such regulations shall be forwarded to the Quinault Business Committee within thirty (30) days of promulgation.
- (b) The regulations shall be administered and enforced by the Division and/or enforcement officers, except as otherwise provided in this Title.
- (c) The regulations adopted by the Division shall be based on the factors that significantly affect the present and future condition of forest land, fish, wildlife and aquatic habitat.
- (d) In promulgating these regulations, the Division shall take into consideration other Nation and applicable federal laws and regulations.
- (e) The regulations shall be continuously reviewed and may be revised from time to time by the Division as technical expertise and natural resource conditions allow.

61.05 Forest Practices

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Enacted: October 23, 1995
Amended: November 28, 2018

61.05.010 Classifications. There are four (4) classes of forest practices created by this Title. These classes include all forest practice activities as defined in this Title as follows:

(a) Class I Forest Practices: Forest practice activities that have been determined by regulation that may be commenced without notification or application.

(b) Class II Forest Practices: Forest practices that have been determined by regulation to have potential to damage a natural resource may be conducted as a Class II forest practices. Class II forest practices require an application and the Division will approve, condition, or disapprove the application within ten (10) business days.

(c) Class III Forest Practices: Forest Practices not listed under Class I, Class II, or Class IV are Class III forest practices. The Division will approve, condition, or disapprove an application for Class III forest practices within twenty (20) business days.

(d) Class IV Forest Practices: Forest Practices determined by regulation to have a high risk to damage a natural resource are conducted as a Class IV forest practice. The Division will approve, condition, or disapprove it within thirty (30) business days, or request additional information and approve, condition or disapprove within thirty (30) days of receiving additional information. Forest practices conducted within or adjacent to the marine shoreline protection strips are Class IV forest practices.

61.05.020 Forest Practices Applications.

(a) No Class II, III or IV forest practices shall be commenced or continued unless the Division has approved an application for forest practices pursuant to this Title and issued a Notice of Decision.

(b) The Division shall prescribe the form and contents of the application, which shall specify what information is needed for the Division to approve or disapprove the application. Such

application shall provide the minimum following information:

- (1) The landowner's name and mailing address.
 - (2) A description of the proposed operation.
 - (3) The precise location of the operation, including a detailed map and legal description of the site.
 - (4) The approximate duration of the operation.
 - (5) The name and contact information of the landowner and resource owner.
 - (6) Name and contact information of the operator(s) when known. When operator(s) are known, purchaser must complete a supplemental directive to identify operator(s) and requiring operator(s) to sign the application or Notice of Decision, whichever is relevant.
 - (7) The name and contact information of the designated agent for cedar salvage activities.
 - (8) A statement that the applicant will comply with all applicable laws of the Nation and consents to jurisdiction of the Nation's Tribal Court and service of process.
 - (9) Such other information as the Division may require.
- (c) Applications shall be signed by the landowner, the resource owner, and the operator(s). In lieu of a landowner's signature, where resource rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual resource rights may sign an application as long as the proposed harvest operation is not converting to another use.
- (d) The landowner shall pay an application fee at the time an application is submitted to the Division as required by regulation.
- (e) An application is complete when so deemed by the Division and written notice is given to the landowner of receipt of a complete application. No application shall be accepted unless all fees

and taxes due and owing have been paid in full.

(f) The Division shall notify the landowner, in writing, of either its approval or denial of the application through a Notice of Decision and, if denied, the reasons for such denial. If the Division fails to approve or deny an application within the applicable time limit, the application shall be deemed approved as submitted to the extent allowed by applicable law, and the operation may commence; however, automatic approval does not exempt landowner or operator from all other applicable laws and regulations.

(g) If seasonal field conditions prevent the Division from being able to evaluate the application, the Division may extend the date of approval or denial by up to sixty (60) calendar days by giving written notice of such extension to the landowner prior to the original approval/denial date. Alternatively, the Division may issue a Notice of Decision conditional upon further review to occur within sixty (60) calendar days of the date of conditional approval.

(h) All forest practices application approvals are subject to any conditions stipulated on the Notice of Decision and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(i) Notices of Decision are effective for a period of time consistent with contracts and modifications and/or for up to five (5) years from the date of approval, or if no contract exists, up to five (5) years from the date of approval at the discretion of the Division. Such approval may be extended through a Notice of Decision at the discretion of the Division.

(j) Forest practices shall be conducted in accordance with all applicable law, this Title and regulations adopted pursuant to it, and the approved forest practices in the Notice of Decision.

(k) The operator or designated agent shall have the Notice of Decision or a copy thereof in his/her possession at all times during which operations are carried on. The operator or designated

agent shall present the Notice of Decision for inspection on demand from an enforcement officer or Division employee.

(l) When a Notice of Decision authorizes a Class IV forest practices activity that has potential for causing material damage to a Reservation resource, as determined by the Division, the landowner shall, when requested on the Notice of Decision, notify the Division up to five (5) business days before the commencement of the actual operations.

(m) Notwithstanding any other provision of this Title, no prior application shall be required for any emergency forest practice action necessitated by fire, flood, windstorm, earthquake or other condition where there is immediate threat to life, the public, property, or of damage to natural resources, as long as such emergency action is reported to the landowner, and or the BIA in the absence of the landowner, within seventy-two (72) hours, and no other permits or licenses are required by this Title. The landowner or operator shall seek approval from the Division prior to commencing work, and the Division shall immediately upon request issue verbal approval for emergency forest practice without the necessity of issuing a written approval prior to commencing work. Verbal approval of an emergency permit is valid for up to seven (7) calendar days from the date of issuance of verbal approval. Such approvals require a complete written application to be submitted within seventy-two (72) hours after commencement of such practice, and a Notice of Decision must be issued by the Division within fifteen (15) calendar days of the receipt of a complete written application. Approval of an emergency forest practice is valid for up to thirty (30) calendar days from the date of application. If the Division deems an emergency did not exist, it may assess punitive damages of up to \$25,000 plus require mitigation or assess the cost of mitigation of damages for harm to Reservation resources, at its discretion. If an application is not submitted within seventy-two (72) hours, the Division may assess punitive damages of up to

\$25,000 at its discretion.

(n) Verbal approval may be obtained after business hours by contacting the Quinault Public Safety dispatch number and requesting contact with the Division Director or designee.

61.05.030 Conversion of Forest Land to Non-Forest Use.

(a) If a forest practices application signed by the landowner indicates that within three (3) years after completion, the forest land will be converted to a specified active use that is incompatible with commercial harvest operations, the reforestation requirements of this Title shall not apply, except the requirement of a bond shall apply, and the information relating to reforestation on the application form need not be supplied.

(b) If the specified active use is not initiated within two (2) growing seasons after harvest is completed, the reforestation requirements shall apply and reforestation shall be completed within one additional year.

61.06 Reforestation

61.06.010 Reforestation Requirements/ Bond.

(a) The Division shall require a landowner to submit a reforestation plan with any application, except where no reforestation is required under this Title or regulations adopted pursuant to it. The Division may not approve a forest practice application unless a reforestation plan is submitted and has been approved by the Division; Provided that, a longer period may be authorized by the Division if seed or seedlings are not available and documentation provided as evidence thereof; and Provided further, that a period of up to four (4) years may be allowed when a natural regeneration plan is approved by the Division.

(b) After the completion of a forest practices operation, satisfactory reforestation as defined

by the regulations promulgated under this Title shall be completed within three (3) years of harvest.

(c) Upon the completion of a reforestation operation, a report on such operation shall be filed with the Division. Within twelve (12) months of receipt of such a report, the Division shall inspect the reforestation operation and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

(d) The regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is incompatible with tree growing.

(e) The Division may, in its discretion, require an operator or land or forest owner to post a reforestation bond or assignment of savings account, which may include site preparation, prior to approving a forest practice application to ensure that reforestation is accomplished.

61.07 Chemicals

61.07.010 Chemicals.

The use of chemicals will be addressed through regulations adopted pursuant to this Title. The Business Committee reserves authority for site-specific approval of the use of pest management chemicals and herbicides.

61.08 Minor Forest Product Practices

61.08.010 Minor Forest Product Practices.

(a) No minor forest product harvest shall be commenced or continued unless the Division has approved an application for such harvest pursuant to this Title and issued a Notice of Decision.

Minor forest practices applications are subject to the same procedures as provided in Section

61.05.020 (b) through (n).

(b) This Section shall not apply to enrolled Quinault tribal members who are gathering minor forest products for personal, traditional or cultural noncommercial use pursuant to their treaty right to harvest.

(c) This Section shall not apply to persons who are cutting or hauling, or assisting those cutting or hauling, firewood under a free use permit issued by the Bureau of Indian Affairs under 25 C.F.R. § 163.26 or § 163.27.

(d) Commercial minor forest product harvest shall not interfere with noncommercial harvest pursuant to a treaty right to harvest.

61.09 Hydraulic Project Approval

61.09.010 Hydraulic Project Approval Required.

(a) It shall be a violation of this Title for any person to divert, obstruct or change the natural flow or bed of any waters or to conduct work within two hundred (200) feet of the ordinary high water mark of a stream, river, lake, tidal area, pond, wetland, or any other body of water unless the Division has approved an application for hydraulic project approval pursuant to this Title and issued a Notice of Decision.

(b) The Division shall prescribe the form and contents of the application, which shall specify what information is needed for the Division to approve or disapprove the application. A complete application for approval shall contain, at a minimum, a legal description of the site, a detailed map, complete plans and specifications of the proposed activities within two hundred (200) feet horizontal distance of the ordinary high water mark of any water body, and complete plans and specifications for the protection of fish and wildlife.

- (c) The landowner shall pay an application fee, if applicable, at the time an application is submitted to the Division as required by regulations adopted pursuant to this Title.
- (d) Applications shall be signed by the landowner, operator, and forest product owner, if applicable.
- (e) An application is complete when so deemed by the Division and written notice is given to the landowner of receipt of a complete application.
- (f) Approvals are subject to any conditions stipulated on the Notice of Decision and to any subsequent additional requirements set forth in a Notice to Comply or Stop Work Order.
- (g) The Division shall notify the landowner, in writing, of either its approval or denial of the application and, if denied, the reasons for such denial. If the Division fails to approve or deny an application within the applicable time limit, the application shall be deemed approved to the extent provided by applicable law, and the operation may commence.
- (h) Approval of a hydraulic project is valid for a period of time consistent with contracts and modifications for up to five (5) years from the date of approval, or if no contract exists, up to five (5) years from the date of approval at the discretion of the Division, which shall be specified in the Notice of Decision. Such approval may be extended through a Notice of Decision issued at the discretion of the Division.
- (i) The operator or designated agent shall have the Notice of Decision or a copy thereof in his/her possession at all times during which operations are carried on. The operator or designated agent shall present the Notice of Decision for inspection on demand from an enforcement officer or Division employee.
- (j) Permittee may request modification of a Notice of Decision due to changed conditions. Such request shall be processed by the Division within forty-five (45) calendar days of receipt of

the written request. The burden is on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish and wildlife.

61.09.020 Emergency Response.

(a) Notwithstanding any other provision of this Title, in the case of an emergency arising from weather or stream flow conditions or other natural conditions, where there is immediate threat to life, the public, property, or of damage to natural resources, the landowner/operator shall seek approval from the Division, and the Division shall immediately upon request issue verbal approval for removing any obstruction, repairing existing structures, restoring stream banks, or to protect property or habitat threatened by the stream or a change in the stream flow without the necessity of issuing a written Notice of Decision prior to commencing work, as long as such emergency action is taken with permission from the landowner and no other permits or licenses are required by this Title. Verbal approval of an emergency permit is valid for up to seven (7) calendar days from the date of issuance of verbal approval. Such approvals require a complete written application to be submitted within seventy-two (72) hours, and a Notice of Decision must be issued by the Division within fifteen (15) calendar days of the receipt of a complete written application.

(b) Verbal approval may be obtained after business hours by contacting the Quinault Public Safety dispatch number and requesting contact with the Division Director or designee.

(c) If the Division deems an emergency did not exist, it may assess punitive damages of up to \$25,000 and require mitigation or assess the cost of mitigation in its discretion. If an application is not submitted within seventy-two (72) hours of commencement of hydraulic project, the Division may assess punitive damages of up to \$25,000 at its discretion.

61.10 Subsurface Mineral Extraction

61.10.010 Application for Mineral Extraction.

(a) Any person desiring to engage in subsurface extraction of minerals shall make written application to the Division for a permit for each mining operation, unless otherwise exempted by regulation adopted under this Title or by resolution of the Quinault Business Committee. The Division shall prescribe the form and contents of the application, which shall specify what information is needed for the Division to approve or disapprove the application. Such application shall provide the minimum following information:

- (1) The materials(s) to be extracted;
- (2) The legal description and area of affected land;
- (3) The owner of the surface of the area of the affected land;
- (4) A reclamation plan shall be required on all the affected land when deemed appropriate by the Division and shall be submitted with the application;
- (5) The owner of the substance to be mined;
- (6) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;
- (7) A description of method of mining;
- (8) The size of the area to be worked at any one time;
- (9) The timetable estimating the proposed duration of the mining operation;
- (10) The potential for impacts to the riverbed, river flow, ground and surface water quality, fish and wildlife and associated habitat, and ceremonial and cultural values and uses by the Nation;
- (11) The nature and extent of invasive species;

(12) A pit management plan and pit development plan, which shall include abandonment and reclamation; and

(13) The written, notarized consent of the applicant and such other persons, if any, necessary to grant physical access to the area under application from the date of the application and during the life of the permit as is necessary to assure compliance with the provisions of this Title.

(b) An applicant shall pay an application fee, if applicable, at the time an application is submitted to the Division as required by regulations adopted pursuant to this Title.

(c) A Notice of Decision approving subsurface mineral extraction may be issued for up to ten (10) years at the discretion of the Division, which shall be specified in said Notice of Decision.

(d) The operator or designated agent shall have the Notice of Decision or a copy thereof in his/her possession at all times during which operations are carried on. The operator or designated agent shall present the Notice of Decision for inspection on demand from an enforcement officer or Division employee.

(e) Extractions of mineral resources must comply with applicable federal requirements.

61.10.020 Transfer of Permit.

No transfer, sale, or other assignment of the rights granted under any Notice of Decision issued pursuant to this Code shall be made without the written approval of the Division.

61.10.030 Extraction of oil, natural gas, and other subsurface resources.

Extraction of subsurface resources shall be in accordance with applicable federal law. Hydraulic fracturing shall not be permitted.

61.11 Other Permits/Licenses Required

61.11.010 Business License Required.

A Notice of Decision approving forest practices or hydraulic project approval shall not be issued unless the operator and designated agent, if applicable, have obtained a Nation business license. Nation staff are exempt from this requirement for activities done pursuant to this Title in furtherance of their job duties. A person applying for an endorsement of a specialized forest product permit may not receive such endorsement until said person obtains a Nation business license, provided that, such license need not be obtained if the hauler is affiliated with an operator who has obtained a Nation business license, has listed said hauler on the application and has paid the required fee on the hauler.

61.11.020 Specialized Forest Products Permit.

(a) All persons, must have in his or her possession, a valid Washington State specialized forest products permit endorsed by the Division and a Washington County Sheriff in order to haul minor forest products within the Reservation. The Division shall endorse specialized forest product permits within fifteen (15) business days of a request for endorsement unless it finds the request is subject to denial or revocation.

(b) Haulers of minor forest products must have a specialized forest product permit in their possession at all times and shall present said permit upon demand by an enforcement officer or Division employee.

(c) Haulers must display the last three (3) numbers of the specialized forest product permit on the minor forest product load visible at the rear of the hauling vehicle.

(d) Hauling shall be restricted to the hours between 8:00 a.m. and 5:00 p.m., provided that, no hauling shall be done on weekends or Nation holidays, unless otherwise authorized by the Division in its discretion.

61.11.030 Road Use Agreement Required.

(a) A fully executed Road Use Agreement (RUA) may be required to be obtained from the Bureau of Indian Affairs prior to hauling timber, rock, or cedar salvage from fee land on any roads within the Quinault Reservation, which shall be determined by the Division based on roads proposed to be used. The RUA may include any conditions deemed necessary in the discretion of the Division.

(b) Upon execution of the Agreement and prior to commencement of hauling, applicant shall pay applicable road use and deferred road maintenance fees as prescribed by regulations adopted pursuant to this Title.

(c) The Roads Manager of the Division's Forestry Department, or designee, will inspect the roads to be used as to the physical condition prior to the start of haul, during haul, and post-haul.

(d) Roads are to be maintained at all times by the applicant or operator to insure safety to the treaty users. Any damage to the road caused by said operation, as determined within the discretion of the Division, will be repaired by the applicant, at his or her expense, immediately or within a timeframe specified by the Division.

(e) If required at the discretion of the Division, applicant will furnish a Performance Bond or Savings Account Assignment conditioned on the faithful performance of all the obligations of the RUA prior to commencing hauling in an amount to be determined by the Division. If a bond is required, it may be released in the discretion of the Division when requirements in this Section are met.

61.11.040 Cutter Cards Required.

- (a) All minor forest product operators, designated agents, and harvesters must obtain a cutter card prior to commencing commercial minor forest product harvest.
- (b) The Division shall prescribe the form and contents of the application for a cutter card to be submitted by an operator. At a minimum, operators must identify the names of all designated agents, and operators or designated agents must identify the names of all minor forest product harvesters and provide a valid Quinault Nation business license and photo identification for each.
- (c) The operator shall pay an application fee for each cutter card at the time an application is submitted to the Division as required by regulation.
- (d) Each cutter card issued shall specify the scope of authority of the holder and designated areas where minor forest product harvest is authorized.

61.11.050 Vehicle Permit.

- (a) All persons required to obtain a minor forest product permit under this Title, contractors or subcontractors to the Nation or a Nation Enterprise, and on-duty government agency staff using Reservation forest roads, not accompanied by Nation staff, must have a vehicle permit issued by the Division confirming the vehicle license plate, current registration, and proof of insurance.
- (b) Persons conducting road construction or conducting tree harvest activities are exempt from the requirement to obtain a vehicle permit for purposes of those activities.
- (c) Vehicle permits are valid for a one-year period or for the period of insurance coverage for the permitted vehicle, whichever is lesser.
- (d) Fees for vehicle permits may be established by regulation adopted under this Title.

61.12 Denial or Revocation of Approval

61.12.010 Grounds for Denial or Revocation.

The Division may deny or revoke any approval, endorsement, or Notice of Decision issued under this Title, in its discretion, for any of the following reasons:

- (a) The applicant is not the real party in interest.
- (b) The Division has reasonable cause to believe there was fraud or material misrepresentation of fact in the application.
- (c) One or more instances of failure of the applicant to comply with the provisions of this Title or any other Nation law or regulation within the last three (3) years.
- (d) The applicant has committed a trespass within the last three (3) years.
- (e) Failure to provide information required in the application or requested by the Division in considering the application.
- (f) The applicant has failed to pay a valid fine, payment, tax or fee due and owing to the Quinault Indian Nation or an entity of the Quinault Indian Nation within the last three (3) years.

61.13 Marine Shoreline Protection

61.13.010 Marine Shoreline Protection Strips.

Marine shoreline protection strips shall be left undisturbed, except the Division may allow minor forest product harvest and harvest that leaves one hundred (100) merchantable well-distributed trees per acre within the most landward one hundred (100) foot area within the marine shoreline protection strip when it determines such thinning will not result in material damage of natural resources.

61.14 Enforcement

61.14.010 Enforcement Policy.

It is the policy of the Nation to encourage informal, practical, common-sense resolution of non-compliance and actions needed to prevent damage to natural resources, forest land, or harm to the health, safety or welfare of the Reservation population. It is also the policy of the Nation, consistent with principles of due process, to provide effective procedures for enforcement. This Section provides the following enforcement procedures: Issuance of a Notice to Comply, or Stop Work Orders, or a Notice of Infraction. The enforcement, following these policies, is authorized to be carried out by Division staff and/or Nation-authorized enforcement officers. The enforcement in any particular case shall be appropriate in view of the nature and extent of the non-compliance or the damage or risk to natural resources and the health, safety and welfare of the Reservation population and the degree of cooperation and bad faith or good faith of the persons involved.

61.14.020 Notice to Comply.

(a) If non-compliance with this Title, its regulations, or a Notice of Decision does not result in actual or risk of material damage to natural resources or forest land or human health or safety, and the Division or law enforcement officer determines that a Stop Work Order is unnecessary, or when non-compliance can be corrected immediately, then the Division or law enforcement officer shall issue and serve upon the applicant, operator and on-site personnel a Notice to Comply, which shall include:

(1) The specific nature, extent, and time of non-compliance with the terms and conditions in the Notice of Infraction and/or with the relevant provisions of Title 61 or the regulations adopted pursuant to it; and

(2) The specific course of action to be followed by the operator to correct such non-compliance.

(b) The Notice to Comply shall include the right to file a complaint pursuant to Section 61.17 of this Title with the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court, within thirty (30) days of the date of the Notice to Comply.

(c) The Division or law enforcement officer shall immediately file a copy of such Notice to Comply with the Division Director and Quinault Indian Nation Office of the Attorney General and mail a copy thereof to the forest product owner and forest land owner at the addresses shown on the application.

61.14.030 Notice of Infraction.

(a) When there is non-compliance with this Title, regulations or a Notice of Decision, the Division or enforcement officer shall serve a Notice of Infraction which shall include:

(1) The specific nature, extent, and time of non-compliance with the terms and conditions in the Notice of Decision or relevant provisions of Title 61 or the regulations adopted pursuant to it;

(2) A description of actual or risk of material damage or harm to natural resources or forest land or human health or safety;

(3) The penalty according to the penalty schedule adopted by regulation under this Title;

(4) The Notice of Infraction shall set forth the right of the operator to file a complaint

pursuant to Section 61.17 of this Title with the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court.

(b) The Division or law enforcement officer shall immediately file a copy of such Notice of Infraction with the Division Director and Quinault Indian Nation Office of the Attorney General and mail a copy thereof to the forest product owner and forest land owner at the addresses shown on the application.

61.14.040 Stop Work Order.

(a) The Division or law enforcement officer may issue an operator a Stop Work Order if:

(1) There is non-compliance of the provisions of Title 61 or regulations adopted pursuant to it or of a Notice of Decision; and

(2) Immediate action is necessary in the discretion of the Division or law enforcement officer and a Notice to Comply will not resolve the non-compliance.

(b) The Stop Work Order shall set forth:

(1) The specific nature, extent, and time of the non-compliance and, if applicable, actual or risk of damage to natural resources or forest land, or harm or risk of harm to human health and safety;

(2) An Order to stop all work connected with the non-compliance, damage or risk of damage or harm;

(3) The specific course of action needed to prevent, and if appropriate, correct such non-compliance.

(c) The Stop Work Order shall set forth the right of the operator to file a complaint pursuant to Section 61.17 of this Title with the Natural Resource Appeals Board or Administrative Law

Judge, or Quinault Tribal Court, within seventy-two (72) hours of the date of the Stop Work Order.

(d) The Division or law enforcement officer shall immediately file a copy of such Stop Work Order with the Division Director and Quinault Indian Nation Office of the Attorney General and mail a copy thereof to the forest product owner and forest land owner at the addresses shown on the application.

(e) The Division, in its discretion, can authorize an operator to continue forest practices prior to correcting non-compliance or deviation resulting in the issuance of Stop Work Order. The Division shall determine when compliance is achieved and may rescind the Stop Work Order at its discretion.

61.14.050 Penalties.

(a) Every person issued a Notice of Infraction may be required, at the discretion of the Division, to pay:

(1) Civil monetary damages in the full amount of the costs of detecting and repairing or rehabilitating any damages done to the natural resources or forest land or water as a result of the non-compliance;

(2) The costs of investigation and enforcement;

(3) Three (3) times the stumpage of any forest products unlawfully harvested, possessed, injured or destroyed;

(4) A civil penalty in accordance with the penalty schedule adopted by regulation under this Title not to exceed \$10,000.00; and/or

(5) Court costs and attorney fees and, if applicable,

(6) Restitution.

(b) Each day of failure to comply with a Stop Work Order or Notice of Infraction constitutes a separate non-compliance for which penalties may be assessed.

(c) Operators are liable for the non-compliance by their affiliated cutters and haulers, contractors or employees. The Nation may pursue civil remedies and penalties against operators for non-compliance by their affiliated cutters, haulers, contractors or employees.

61.14.060 Other Participants.

Every person who, through an act of commission or omission, aids or abets in non-compliance of this Title, regulations adopted under it, or of a Notice of Decision may be considered to be non-compliant and may be subject to the penalties pursuant to the penalty schedule adopted by regulation under this Title.

61.15 Seizure and Forfeiture

61.15.010 Seizure Authorized.

Whenever any commissioned law enforcement officer has probable cause to believe that any equipment, including vehicles, is being used in violation of this Title or regulations adopted pursuant to it, and, except with respect to Timber excise taxes due and owing, such non-compliance results in material damage to natural resources or forest land, such officer may seize such equipment. Whenever any commissioned law enforcement officer has probable cause to believe that any forest products are being stolen, said products may be seized by such officer.

61.15.020 Seizures of Property – Procedure.

(a) When property is seized pursuant to the provisions of this Title, the officer seizing said items must at the time of seizure issue a receipt to the owner or operator of the equipment, and if applicable, to the Designated Agent if on-site, or the Operator, for all property seized.

- (b) The receipt must contain the date of the seizure, incident number associated with the seizure, a complete description of the item seized including any existing damage to the item, the serial number of the item (if applicable), the number of units of a particular item, the estimated value of the item, and an indication of whether the item is perishable.
- (c) The receipt must be signed by the officer seizing the item and, if possible, by the claimant or owner of the item seized.
- (d) A copy of the receipt must be given to the owner or claimant at the time of seizure. The original of the receipt is to be attached to and remain with the incident report.
- (e) All property seized shall immediately be securely stored, and a complete inventory of the item or items seized shall be made in the presence of the shift supervisor or another law enforcement officer. The inventory shall be signed by the person seizing the property and a witness. The property shall be maintained for disposal by order of the Natural Resource Appeals Board or Administrative Law Judge, or if not appointed by the Quinault Business Committee, the Quinault Tribal Court, in forfeiture or other judicial proceedings.
- (f) Failure by the seizing officer to issue a receipt at the time of seizure shall be a bar to any forfeiture action under this Title and will require the immediate return of all seized items to the lawful owner or claimant.
- (g) In the event of a seizure, whether any item was the subject of an emergency forfeiture action or not, the rightful owner, lien holder, or claimant may petition the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court in a separate action for the return of any property seized, which may:

- (1) Order the immediate return of any or all of the property seized to any person having lawful claim to said property upon a showing that a reasonable person could not have believed that

the property seized was used or obtained in violation of this Title;

(2) Order that the property seized shall remain in the custody of the officer who seized the property;

(3) Order that any or all of the property be returned to any person having lawful claim to said items in exchange for bond or cash surety;

(4) Provide any other disposition of seized property as it deems appropriate.

61.15.030 Forfeiture.

(a) The seizing officer shall file a forfeiture motion with the Natural Resource Appeals Board or Administrative Law Judge, or if not appointed by the Quinault Business Committee, in Quinault Tribal Court within ten (10) business days of seizure.

(b) Notice of a forfeiture motion shall be given to the claimant of the property seized by certified mail, return receipt requested, and the claimant shall be afforded a reasonable opportunity to be heard.

(c) Except as otherwise provided in this Title, the Quinault Tribal Rules of Civil Procedure shall apply to civil actions to obtain forfeitures of property for violation of this Title.

(d) Any moneys or other proceeds from forfeiture of property under this Title shall be applied, in the following order:

(1) The costs, including court and related expenses, of detecting the non-compliance; seizing, storing and handling any property; selling forfeited property; and other costs reasonably associated with enforcing this Title.

(2) The cost of rehabilitating the natural resources or forest land affected by the non-compliance.

61.15.040 Emergency Forfeitures.

(a) Upon a determination by the officer seizing any item that said item is perishable and will lose all, or a substantial amount, of its value if not sold or otherwise disposed of, an action may be brought before the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court, for emergency forfeiture of the seized item or items.

(b) Any moneys received from emergency forfeiture shall be held by the Nation in an escrow account pending the final disposition of the non-compliance.

61.16 Civil Penalties

61.16.010 Penalties Due.

Penalties imposed under this Title shall become due and payable thirty (30) calendar days after receipt of a notice imposing the same unless an appeal is filed with the Quinault Tribal Court, in which case any penalty incurred under this section shall become due and payable thirty (30) calendar days after receipt of notice setting forth the disposition or issuance of a final judicial order confirming the penalty in whole or in part. The Division is authorized to pursue reasonable collection of unpaid penalties.

61.16.020 Proceeds of Fees and Penalties.

Proceeds from fees and penalties shall be deposited in a Natural Resource Restoration Fund to be used by the Division for emergency protection or restoration of Reservation resources at the discretion of the Division.

61.17 Administrative Review

61.17.010 Administrative Review.

Quinault Tribal Code Title 61
Enacted: October 23, 1995
Amended: November 28, 2018

- (a) Any person aggrieved by any act or decision, or failure to act or make a decision, of the Division made under this Title shall have the right to seek administrative review before the Natural Resource Appeals Board or Administrative Law Judge, if appointed by the Quinault Business Committee, or by filing a complaint in the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court.
- (b) Any such complaint seeking administrative review before the Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court, must be filed with that respective judicial body in writing within thirty (30) calendar days of the effective date of written decision, or Division action or inaction, except as otherwise provided in this Title. Such complaint must specify the nature of the complaint and provide all relevant information.
- (c) Copies of any such complaint shall be served upon the Director of the Division, the Office of Attorney General, and all parties of record by certified mail, return receipt requested, or by in-person service. The judicial body, in its discretion, may allow other interested persons to intervene.
- (d) The filing of the complaint shall not stay enforcement of the Division decision except that the judicial body may order a stay upon such terms as it deems proper.
- (e) The Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court, will conduct a hearing within thirty (30) calendar days after receipt of a written complaint in accordance with the Quinault Indian Nation Administrative Procedures Act, or if no such Act is adopted, the Quinault Tribal Court Rules of Civil Procedure, except that the parties shall not be entitled to a trial by jury.
- (f) The Natural Resource Appeals Board or Administrative Law Judge, or Quinault Tribal Court, shall issue a written decision within thirty (30) calendar days of the hearing and provide it

by certified mail, return receipt requested, to the complainant and all parties, and to the Division and the Office of Attorney General.

61.18 Forest Trespass

61.18.010 Forest Trespass.

(a) Pursuant to 25 U.S. Code § 3106(c), the Nation assumes concurrent civil jurisdiction to enforce this trespass section and the regulations promulgated thereunder, including 25 C.F.R. § 163.29. The Bureau of Indian Affairs and other agencies of the Federal Government shall, at the request of the Nation, defer to Nation prosecutions of forest trespass cases. Quinault 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 25 U.S.C. § 3106.

(b) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(c) For trespass actions brought in Quinault Tribal Court, the measure of damages, civil penalties, remedies and procedures will be as set forth in 25 C.F.R. § 163.29 and this Section. If any part of this Section shall be found to be in conflict with federal requirements for damages, civil penalties, or remedies, the federal requirements control.

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

(1) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from the Reservation, or land under the jurisdiction of the Nation under this Title, any forest product as defined in this Title. Proof of Indian 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.

(2) Payment of costs associated with damage to Nation 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.

(3) Payment of all reasonable costs associated with the enforcement of these trespass regulations 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.

(4) Interest calculated at the statutory rate prescribed by the Nation, or in the absence of Nation requirements, in the amount prescribed by federal law. Where Nation law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. 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.

(e) 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 Title. 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 Indian beneficial owners 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 Indian beneficial owners, the Nation, 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.

(f) 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 the 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, or land under the jurisdiction of the Nation under this Title, in which the trespass took place.

(g) When a federal official or Nation commissioned enforcement officer 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 or land under the jurisdiction of the Nation under this Title. 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 officer initiates seizure under these

regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through appeal to the Quinault Tribal Court, and shall provide the name and the address of the officer with whom the appeal may be filed. In such case, the Notice of Seizure shall identify the law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. 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 officer, where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an appeal or by a challenge of the seizure action through Quinault Tribal Court. 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.

(h) 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 Nation supervision, the federal official or Nation enforcement officer shall immediately provide the following notice to the owner of the land and 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 Nation.

(i) An enforcement officer will promptly determine if a trespass has occurred. The enforcement officer 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 processor:

- (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 the trespass may

result in civil and/or criminal action by the United States or the Nation.

(j) The Secretary of Interior 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 Nation exercising its concurrent jurisdiction pursuant to 25 C.F.R. § 163.29(j).

61.19 Miscellaneous

61.19.010 Savings Clause, Severability.

If any paragraph, sub-paragraph, clause, sentence or phrase of this Title or regulations adopted pursuant to this Title shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining portions of the Title, and those remaining portions shall remain in full force and effect and to this end, provisions of this Title and any regulations adopted pursuant to this Title are declared severable.

61.19.020 Sovereign Immunity Preserved.

Except as judicial review is authorized in this Title, nothing herein shall be interpreted as a waiver of the Nation's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Nation.

61.19.030 Operation of Chapter if in Conflict with Federal Law.

If any part of this Title shall be found to be in conflict with federal requirements, such conflicting part of this Title is hereby declared to be inoperative solely to the extent of such conflict, which shall not affect the operation of the remainder of this Title.

61.19.040 Operation of Chapter if in Conflict with Timber Excise Tax Compact and Timber Excise Tax.

The Quinault Indian Nation has entered into a Compact with the State of Washington regarding the levy and collection of an excise tax on timber harvest from fee lands within the Quinault Indian Reservation authorized by RCW 43.06.480. In accordance with the terms of the Compact and during its term, to the extent provisions of this Title conflict with the Compact, the terms of the Compact control.

LEGISLATIVE HISTORY

The Business Committee of the Quinault Indian Nation enacted Title 61 by Resolution No. 95-66-73 at a regular meeting on October 23, 1995, by a vote of 7 for, 0 against, and 1 abstaining.



Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211

QUINAULT BUSINESS COMMITTEE

RESOLUTION NO. 18-381-97

WHEREAS, the Quinault Business Committee is the recognized governing body of the Quinault Indian Nation under the authority of the Quinault Indian Nation's Constitution adopted by the Quinault General Council on March 22nd, 1975; and

WHEREAS, the Constitution (Art. V, Section 2) of the Quinault Indian Nation authorizes the Quinault Business Committee to enact laws for the welfare of the Nation as long as public hearings are conducted on said laws; and

WHEREAS, the Business Committee conducted public hearings as required by the Quinault Indian Nation Constitution on amendments to Title 61 on September 10, 2018, in the Village of Queets and September 24, 2018, in the Village of Taholah,

NOW THEREFORE, BE IT RESOLVED, that the Quinault Business Committee hereby **approves and enacts** the attached Title 61 Natural Resource Management Code amendments, which will be effective as of the date of execution of this Resolution.

Fawn R. Sharp, President
Quinault Indian Nation

CERTIFICATION

As Secretary of the Quinault Business Committee, I hereby certify that the foregoing resolution was duly enacted by the Quinault Business Committee at a regular meeting held in Taholah, Washington on the 28th day of November 2018, by a vote of 9 for, 0 against, and 1 abstaining.

Latosha Underwood, Secretary
Quinault Indian Nation