

# Resolutions of Tribal Council

## Museum grant

**Whereas** the preservation and perpetuation of the history of the Confederated Tribes is of central importance to the Tribes; and,

**Whereas** the Confederated Tribes originally chartered the Middle Oregon Indian Historical Society in 1974 by Resolution No. 4084 to plan for and develop a Tribal museum and oversee the collection of Tribal artifacts; and,

**Whereas** that Charter was subsequently amended by Resolution No. 4422 in 1974 and Resolution No. 7741 in 1987; and The Charter for The Museum At Warm Springs, a subordinate organization of the Confederated Tribes of the Warm Springs Reservation of Oregon, was adopted on June 30, 1992, and The Museum At Warm Springs began operations in March, 1993; and,

**Whereas** the Tribal Council contributes significant annual support for The Museum's General Operations; and The Museum earns additional General Operations revenue through admissions, memberships, donations, fund raising events and supports exhibitions and educational programs through grant awards and sponsorships; and,

**Whereas** the Museum has been open to the public for 21 years and its mechanical systems are requiring considerable resources for repairs in order to continue to maintain the heating, cooling, and humidity levels necessary to preserve The Museum's material and archival Collections; and,

**Whereas** the original Shitike Creek water supply system for the HVAC system is no longer a viable water source and The Museum has been forced to use municipal water to operate the HVAC system; and the excessive water use is placing a burden on Tribal resources; and,

**Whereas** improvements to the mechanical systems and solution of the water issue will relieve a significant strain on Tribal resources and advance the Museum At Warm Springs Master Plan to prepare for the future; now, therefore,

**Be it resolved** by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon pursuant to the Tribal Constitution and By-Laws, Article V, Section 1 (l) and (o) declares that The Museum At Warm Springs Master Plan to prepare for the future is a priority and hereby approves the preparation and submission of a grant application, by The Museum to the Spirit Mountain Community Fund Tribal Grant Program. (*Resolution no. 11,859*)

## ICWA

**Whereas** the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1903(4), defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is

the biological child of a member of an Indian tribe"; and,

**Whereas** the Tribal Council is aware that some state courts have questioned whether children who are not eligible for automatic enrollment under Article III, Section 2, of the Tribal Constitution and By-Laws, and Warm Springs Tribal Code (WSTC) 120.300, but who are eligible for enrollment by adoption under Article III, Section 3, of the Tribal Constitution and WSTC 120.800, are "eligible for membership" in the Tribe under ICWA if they don't currently meet all of the requirements for adoption; and,

**Whereas** the Tribe has the exclusive authority to determine who is eligible for membership in the Tribe, and the Tribal Council views children who meet the blood quantum and descendent requirements for enrollment by adoption as eligible for enrollment under ICWA because the child may one day become a member of the Tribe if the child meets the other requirements for enrollment by adoption; and,

**Whereas** the Tribal Council believes it is necessary to add a provision to the Warm Springs Tribal Code to make it clear that the Tribe views these children as eligible for enrollment under ICWA; now, therefore,

**Be it resolved** by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article III and Article V, Section 1(l) and (u), of the Tribal Constitution and By-Laws, that the Tribal Council hereby amends WSTC 360.500 as follows (amendment represented by additional underlined text):

**Applicability of Indian Child Welfare Act.** The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., apply to certain state court child custody proceedings involving juveniles who are enrolled or eligible for enrollment in the Warm Springs Tribes. *A juvenile who has the blood quantum necessary for automatic enrollment or enrollment by adoption under Article III of the Warm Springs Constitution (as amended) and who has a biological parent who is enrolled in the Warm Springs Tribes is eligible for enrollment for the purposes of the application of the Indian Child Welfare Act.* Under the jurisdictional provisions of the Indian Child Welfare Act, 25 U.S.C. § 1911, the Warm Springs Tribes may intervene in or seek to transfer jurisdiction of applicable state court child custody proceedings; and,

**Be it further resolved** by the Tribal Council that the amendment to WSTC 360.500 set forth above are effective immediately. (*Resolution no. 11,866*)

## Sex offender registration

**Whereas**, Per Resolution No. 10,774, the Tribe elected to participate as a sex of-

fender registration jurisdiction under Title I of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), which requires registration jurisdictions to create and implement a sex offender registration and notification program that meets the requirements contained in Title I of the Adam Walsh Act; and,

**Whereas**, As part of the Tribe's effort to create and implement a sex offender registration and notification program that is compliant with Title I of the Adam Walsh Act, the Warm Springs Tribal Council approved Ordinance 91, codified as Chapter 380 of the Warm Springs Tribal Code ("WSTC"), on April 1, 2010; and,

**Whereas**, The Tribal Council believes that in order to maintain and enhance the Tribe's sex offender notification and registration program, and to improve public safety on the reservation with respect to certain sex offenders, it is necessary to amend WSTC Chapter 380 to include additional provisions regarding check-in requirements for homeless offenders and to include a criminal offense prohibiting offenders convicted of a sex offense involving a child under the age of fourteen (14) from conducting certain activities on or near places frequented by minors; now, therefore,

**Be it resolved** by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(i), (l), and (u), of the Tribal Constitution and By-Laws, that the Tribal Council hereby amends WSTC Chapter 380 to include the following criminal offense regarding violation of child safety zone restrictions:

**380.615 - Violation of Child Safety Zone Restrictions.** A person is guilty of an offense subject to penalties in accordance with WSTC 380.600 or WSTC 380.605 if that person was convicted of a sex offense involving a child under the age of fourteen (14) and is subject to the registration requirements in this Chapter, and does one or more of the following:

(1) Loiters or parks a vehicle within 500 feet of a school, playground, public swimming pool, skate park, baseball field, child care facility, child care provider, youth center, or any other location accessible to the public that is established or designated specifically for the use and enjoyment of minors, while minors are present, unless the person has legal and physical custody of his or her children and is dropping off or picking up his or her children from school or a child care facility or provider or is attending a school function with his or her children;

(2) Attends an event held primarily for minors where minors are in attendance unless the person has legal and physical custody of his or her children and is attending the event with his or her children;

(3) Has contact with a child care facility or provider during its hours of operation unless the person has legal and physical custody of his or her children and is drop-

ping off or picking up his or her children from the facility or provider; or

(4) After May 24, 2014, establishes and maintains a residence within 500 feet of a school, playground, public swimming pool, skate park, baseball field, child care facility, child care provider, youth center, or any other location accessible to the public that is established or designated specifically for the use and enjoyment of minors and is commonly used by minors; and,

**Be it further resolved** by the Tribal Council that the Tribal Council hereby amends WSTC 380.010 to include the following definition of "homeless" as subsection (8), and to renumber the existing subsections accordingly:

(8) "Homeless" means lacking a fixed, regular, and adequate nighttime residence; living in a publicly or privately operated shelter designated to provide temporary living arrangements; or having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including, but not limited to, a car, park, abandoned building, bus or train station, airport, or camping ground; and,

**Be it further resolved** by the Tribal Council that the Tribal Council hereby amends WSTC 380.315(1) as follows (addition in bold):

(1) Jurisdiction of Residency. All sex offenders required to register with the Tribe must immediately appear in person before the Tribal Registry Administrator to update any change to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register with the Tribe shall immediately inform the Tribal Registry Administrator via phone or in-person appearance of any changes to their temporary lodging information (when a Tier 3 Sex Offender will be absent from his or her residence for 24 hours or more, or when a Tier 1 Sex Offender or Tier 2 Sex Offender will be absent from his or her residence for 7 days or more), international travel plans, vehicle information, email addresses, telephone numbers, Instant Messaging addresses, and any other designation used in Internet communications, postings, or telephone communications. In the event of a change in temporary lodging, the sex offender and the Tribal Registry Administrator shall immediately notify the jurisdiction in which the sex offender will be temporarily staying. A sex offender who becomes homeless and is required to register with the Tribe under this Chapter must appear in person before the Tribal Registry Administrator every thirty (30) days for the duration of the sex offender's homelessness; and,

**Be it further resolved** by the Tribal Council that amendments to WSTC Chapter 380 set forth herein shall be effective on May 24, 2014. (*Resolution no. 11,858*)

## Tax matter

**Whereas** the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe" or "CTWS") is a federally recognized tribe; and,

**Whereas** the Tribe is the sovereign authority on the Warm Springs Reservation and CTWS trust lands and participates in or directly provides all governmental services on the Warm Springs Reservation and on CTWS trust lands; and,

**Whereas** on November 26, 2012, pursuant to Tribal Council Resolution 11,692, the Tribal Council re-activated the Tribal Tax Commission authorized by WSTC Section 700.100; and,

**Whereas** the Tax Commission was directed to pursue certain tax agreements with the State of Oregon; and,

**Whereas**, On July 30, 2013, the United States Ninth Circuit Court issued a decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* (Chehalis case) that clarified that federal law at 25 USC section 465 expressly preempts state and local taxes on permanent improvements located on tribal lands held in trust by the United States, regardless of ownership of the permanent improvements; and,

**Whereas** the Chehalis case is a final decision and is controlling law in the State of Oregon, however the Oregon Department of Revenue has failed to issue clarifying guidance regarding implementation of the Chehalis ruling, thus continuing the uncertainty regarding tax liability for potential investors in Indian country; and,

**Whereas** the Tribe is pursuing certain economic development activities, including but not limited to, economic development activities associated with the Federal Aviation Administration's (FAA) selection of test sites for unmanned aircraft system (UAS) research, including the Warm Springs Reservation as a test range within the Pan Pacific UAS Test Range Complex; and,

**Whereas** Tribal economic development activities are necessary to provide governmental revenues critical for advancing and sustaining the welfare of the CTWS membership and Warm Springs Reservation; and,

**Whereas** in the next three years the Warm Springs UAS test site has the potential to create up to 70 direct jobs

and up to \$19 million in new economic impact for the region and to support up to 450 new jobs and \$95 million in new economic impact statewide; and,

**Whereas**, uncertainty as to state and local tax treatment of outside investment will discourage investment in the Warm Springs UAS test site which is the focal point for the region's economic development efforts in this area; and,

**Whereas**, in light of the FAA program's timeline, the effectiveness of the Warm Springs UAS test site to attract new industry investment onto the Reservation and in the region is time-sensitive; and,

**Whereas** it is critical that the taxing authority of the state on the Reservation be clarified as soon as possible to timely attract high value investment onto the Reservation and by extension in the region; and,

**Whereas** the Tribe supports state legislative and administrative efforts to implement the Chehalis case ruling and supports other shorter and longer term efforts to address tax uncertainty in Indian country; now, therefore,

**Be it resolved** by the Twenty-Sixth Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(a), (l) and (u) of the Tribal Constitution and By-Laws, that the Tribal Council hereby supports state and tribal legislative and regulatory efforts to implement the Chehalis case ruling and directs the Tribal Tax Commission to form a working group ("Working Group") to coordinate with the Tax Commission and Tribal Council to:

1. Support state and tribal legislative and regulatory efforts to implement the Chehalis case ruling; and,
2. Pursue other state and local efforts to create near-term clarity on taxing authority on Tribal lands in order to advance critical Tribal economic development and public service goals and needs; and,

3. Develop a CTWS property tax code recommendation for the Tribal Council; and,

**Be it further resolved** by the Tribal Council that the Tax Commission and Working Group provide periodic updates to the Tribal Council regarding progress in addressing these tax and taxation initiatives. (*Resolution no. 11,867.*)



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