

NORTHERN ARAPAHO CODE

TITLE 16. EMINENT DOMAIN

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Section 101. Definitions. As used throughout this Code:

(a) "Public use" means any of the following:

(i) The possession, occupation, use or enjoyment of property by the general public or the Tribe;

(ii) The use of property for the creation or functioning of public utilities;

(iii) The acquisition of property to eliminate (i) a threat or hazard to public health or safety; (ii) a blight or detriment to an area possessed, occupied, used and/or enjoyed by the general public, or (iii) an obstacle or hindrance, whether tangible or intangible, to the possession, occupation, use and/or enjoyment by the general public of property belonging to the Tribe, caused in any such case by the property in its current condition or by an encumbrance, tangible or intangible, affecting such property, including elimination by means of (a) the removal of a structure that is or is foreseeably beyond repair at a reasonable expense or unfit for human habitation or use, (b) completion of a structure in order to facilitate human habitation or use, and/or (c) the removal of the obstacle, hindrance or encumbrance;

(iv) The acquisition of abandoned property; or

(v) The public benefit of economic development, including an increase in tax base, tax revenues, general revenues, tourism, recreation, employment or general economic health.

(b) "Take," "taken" and "taking" mean the transfer of ownership or use from a property owner to the Tribe.

(c) "Include," "included" and "including" denote a partial definition, by way of illustration and not by way of limitation, and have the same effect as if the phrase "without limitation" (or any variation thereof) were added thereto.

(d) "Tribe" means and refers to the Northern Arapaho Tribe, a federally recognized Indian Tribe, its governmental departments and agencies, and/or its tribally owned businesses.

(e) "Business Council" means the Northern Arapaho Business

Council.

(f) "Court" includes every court, tribunal, or judge having jurisdiction in the case.

(g) "WRIR" means the Wind River Indian Reservation.

Section 102. Purposes for Which Eminent Domain May Be Exercised.

Subject to the provisions of this Section, the right of eminent domain may be exercised by the Tribe, through action of the Business Council, for the following uses:

(a) All public uses authorized by the government of the United States or the Tribe;

(b) Buildings, grounds and other facilities for the use of the Tribe;

(c) All property interests, tangible or intangible, for any use of the Tribe, or any other use authorized by the Business Council;

(d) Sanitary sewerage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(e) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(f) Water systems for domestic, industrial, irrigation, tribal government or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(g) Electrical systems, including generation, storage, transmission and distribution of electrical power;

(h) Telecommunications systems, including all forms of telecommunications equipment, towers, receivers, transmitters, lines, antenna, and dishes;

(i) Highways, streets, roadways and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(j) Areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(k) Pedestrian malls, parks, performance venues, views, vistas, outlooks and other prospects, recreational facilities, stadiums, other structures, facilities and improvements, and open space areas for use of members of the public for entertainment, assembly, tourism and recreation;

(l) Landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(m) Lighting systems;

(n) Traffic control systems and devices, including signals, controls, markings and signage;

(o) Wharves, docks, piers, ramps, marinas, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads and highways;

(p) Railroads, railways, transit lines, and trolley lines, including rights-of-way, station grounds, pits, yards, sidetracks and other necessary facilities for the foregoing;

(q) Pipelines used for carrying gas, petroleum, petroleum products or any other gas or liquid;

(r) All transportation, transmission and intercommunication facilities of public service agencies;

(s) Aviation fields;

(t) Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, and outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, or any place for the flow, deposit or conduct of tailings or refuse matter from their several mines; and

(u) Any other use that is determined by the Business Council to be necessary for the economic security, political integrity, or health and welfare of the Tribe.

Section 103 - Estates in Land Subject to Condemnation. All estates and interests, in, on or to land located on or within the

boundaries of the Wind River Indian Reservation ("WRIR") are subject to be taken for public use.

Section 104 - Private Property Subject to Condemnation. In addition to the estates and interests in land in Section 103, estates and interests in private property which may be taken includes:

(a) Any property located on or within the boundaries of the WRIR belonging to any person;

(b) All property subject to the jurisdiction of the Tribe having an effect on the WRIR, the Tribe or a tribal member;

(c) All tangible or intangible property, including intangibles such as contracts, franchises, licenses, leases, patents, trade routes, and other types of property, including contracts pertaining to the possession, occupation, use, design, development, improvement, construction, operation and/or management of property, including property owned by the Tribe;

(d) Property appropriated to public use; and

(e) All other classes of private property not enumerated may be taken for public use.

Section 105 - Right of Tribe to Enter, and Examine, Survey, Inspect or Inventory.

(a) Where land is required for public use, the Tribe, through its agent(s), may enter upon the land, and make examinations, surveys and maps thereof.

(b) Where property other than land is required for public use, the Tribe, through its agent(s), may subject the property to examination, inventory or inspection, including any property that is associated with a contract, franchise, license, lease, patent, trade route or other type of property which is subject to being taken. The person in control of such property shall cooperate with the Tribe, or its agent(s), in making the property available for examination, inventory or inspection.

(c) A person authorized by the Business Council to seek to acquire property for any of the public uses authorized by this Section is an agent of the Tribe. The Tribe, or its agent(s), may exclude other persons, including the person in control of the

property, from the property or portions thereof as and to the extent deemed necessary or appropriate by the Tribe, or its agent(s), to facilitate any examination, survey, mapping, inventory or inspection.

(d) No one shall have a cause of action against the Tribe, or its agent(s), for exercising the authority granted under this Section.

(e) The Business Council may, but is not required to, enforce this Section through judicial process or its inherent contempt power. The Business Council is not required to obtain a writ, subpoena or other judicial process prior to exercising its rights under this Section. If deemed necessary or appropriate, the Business Council may, but is not required to, issue one or more subpoenas and/or enlist the assistance of law enforcement in exercising its rights under this Section.

Section 106 - Actions for Condemnation, Declaration of Taking.

(a) All actions for condemnation shall be brought as other civil actions in any Court having jurisdiction thereof.

(b) At the time of filing the complaint, or at any time after filing the complaint, the Tribe may file with the Court a declaration of taking, signed by the Business Council Chairperson, Co-Chairperson, or the Business Council's authorized agent, declaring that the property described in the complaint is taken for the use of the Tribe.

(c) The declaration of taking shall contain or have annexed to it:

(i) A statement of the public use for which the property is taken, which declaration may take the form solely of citing the pertinent category or categories of public use set forth in Section 101(a);

(ii) A description of the property sufficient to identify it;

(iii) A statement of the estate or interest in the property taken, which statement may be identical or similar to the description provided pursuant to Section 106(c)(ii);

(iv) A statement of the amount of money estimated by

the Tribe to be just compensation for the property taken; and, in the Tribe's sole and absolute discretion, any deposit made for the purpose of providing or assuring just compensation; and

(v) The declaration of taking is not required to, and need not, contain or have annexed to it any other statement or other material.

(d) On filing the declaration of taking:

(i) Title to the estate or interest specified in the declaration of taking shall vest in the Tribe, and such vesting shall include that, if the property is an estate or interest in an intangible such as a contract, franchise, license, lease, patent, trade route or other types of property, the Tribe shall be the party thereto in the full place and stead of the defendant, to the full extent as if the Tribe and not the defendant were the original signator or party thereto, and the defendant shall no longer be a party thereto;

(ii) The property is condemned and taken for the use of the Tribe;

(iii) The parties in possession of the property shall be deemed to have surrendered possession to the Tribe, and any attempt by such parties to remain in possession of the property or otherwise to exert control over or with respect to the property shall be deemed a trespass against the Tribe; and

(iv) The right to just compensation vests in the person(s) entitled to just compensation.

(e) The Court shall not require the Tribe to post a bond or deposit any money as a condition of filing a declaration of taking or initiating a condemnation proceeding; however, if the Business Council, in its sole and absolute discretion, deems a deposit necessary or appropriate under the circumstances, the Tribe may elect to deposit in the Court or in escrow the amount of estimated compensation listed in the declaration of taking.

(i) The making of a deposit shall not be a condition to the effectiveness of matters set forth in Sections 106(d)(i) through 106(d)(iv).

(ii) The absence of a deposit at the time of the filing of the declaration of taking shall not preclude the Tribe from subsequently electing to make such a deposit.

(f) Within ten (10) days of the filing of the declaration of taking, the defendant may file a motion to dismiss the condemnation action and declaration of taking solely for the purpose of challenging the validity of the taking as not being for a public use.

(i) The motion to dismiss and hearing on the motion to dismiss shall be limited to a judicial determination on whether the taking is for a public use. The motion to dismiss shall not contain and the Court shall not adjudicate any other challenge or issue at this stage of the proceeding, including any claim that the defendant is not a real party in interest, that the defendant does not hold title to any estate or interest in the property, or that there are other persons who might hold an estate or interest in the property or might otherwise be interested in the taking.

(ii) Within twenty (20) days of the filing of the motion to dismiss, the Tribe may respond to the motion to dismiss.

(iii) The Court shall set a hearing on the matter, which hearing shall be held within forty (40) days of the filing of the declaration of taking, and the Court shall rule on the matter within sixty (60) days of the filing of the declaration of taking. The taking shall be presumed in all cases to have been for a public use. The defendant shall have the burden of proving and establishing by clear and convincing evidence facts rebutting the presumption.

(iv) During the period of defendant's challenge to the taking as not being for an authorized public use, the Tribe shall hold a defeasible title to the property listed in the declaration of taking. The Tribe shall have the full right and authority to possess and use the property, including acting as the party to the contract or other intangible property, described in the declaration of taking. The Tribe's right and authority to possess and use the property, including acting as the party to the contract or other intangible property, described in the declaration of taking shall not be delayed or prevented through any court action.

(v) If, after a hearing, the Court determines that the taking is for a public use, absolute title to the property described in the declaration of taking shall vest in the Tribe and, in the case of a contract or other intangible property, the Tribe shall be the party thereto in the full placement and stead of the defendant, all as provided in Section 106(d)(i), and the right to just compensation shall vest in the defendant.

(vi) No subsequent proceedings shall affect the title acquired by the Tribe to the property, or its status as a party to the contract or other intangible property, described in the declaration of taking.

(g) Compensation shall be determined and awarded as prescribed in Section 112.

(i) If compensation finally awarded is more than the amount of money, if any, deposited in the Court or escrow at the time of the filing of the declaration of taking, the Court shall enter judgment against the Tribe in the amount of the deficiency.

(ii) If compensation finally awarded is less than the amount of money deposited in the Court or escrow at the time of the filing of the declaration of taking, the Court shall immediately refund the excess to the Tribe.

(h) If the Tribe elected to make a deposit as provided in Section 106(e), on application of the defendant the Court may order that any part of the money deposited in the Court or escrow, if any, be paid immediately to the defendant as compensation for the taking, subject to the following conditions:

(i) The application must contain (i) a statement of the defendant's interest in the property described in the declaration of taking, how much money the defendant is seeking as compensation for that interest, a representation that the defendant has not conveyed or become obligated to convey the defendant's interest in such property to any other person, and the names and addresses of all other persons having an interest in such property; and (ii) an indemnity in form and substance satisfactory to the Tribe in its sole and absolute discretion regarding the true and complete nature of such statement;

(ii) In addition to the application, the defendant shall file with the Court a stipulation that the money applied for constitutes full and just compensation for the taking;

(iii) Payment of the money to the defendant shall constitute a complete settlement of the case with respect to that defendant, a full relinquishment of that defendant's claims arising in connection with the action or proceeding and of that defendant's right, title and interest in and to the property described in the declaration of taking, and an abandonment of that defendant's defenses to the action or proceeding, other than the right to the just compensation described Section 106(g)(i); and

(iv) Any other defendant having an interest in the property described in the declaration of taking may contest the amount of compensation sought by the defendant filing an application for an award out of the deposited funds. The Court shall determine the respective rights of the defendants seeking compensation for the taking.

(i) On the filing of the declaration of taking, the Court may make just and equitable orders, not inconsistent with the other provisions of this Section, with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges.

(j) Any information contained in the declaration of taking and the amount of money, if any, deposited by the Tribe into the Court shall not be introduced in evidence or used to the prejudice of any party on the trial of the action.

(k) In the event of any inconsistency or conflict between Section 106 and any other provision of this Section, Section 106 shall control and govern the matter.

Section 107 - Complaint.

(a) The complaint shall set forth:

(i) The Tribe and, if applicable, the name of the Tribe's agent(s), as plaintiff;

(ii) The names of all persons having an interest in the property, if known, or a statement that they are unknown, as defendants;

(iii) A statement of the right of the Tribe, including a statement of the public use for which the property is sought, which statement may take the form solely of citing the pertinent category or categories of public use set forth in Section 101;

(iv) A general description of the property subject to condemnation sufficient to identify it; and

(v) A statement of the estate or interest in the property taken, which statement may be identical or similar to the description provided pursuant to Section 107(a)(v).

(b) The Tribe is not required to, and need not, plead or prove any other matter, including that the public use is "necessary."

Section 108 - Joint or Separate Actions; Consolidation. All separate property required for the same public use may be included in the same or separate proceedings, at the election of the Tribe, but the Court may consolidate or separate them for convenience of the parties.

Section 109 - Summons; Contents; Service.

(a) Upon receiving the complaint for filing, the Clerk of Court shall follow the procedures for issuance of a summons and notice of hearing prescribed by the applicable Rules of Civil Procedure.

(b) Notice to defendant shall include a statement for it to appear and show cause why the property described should not be condemned as prayed for in the complaint.

(c) Failure of the Clerk of Court to follow any of the specialized procedures in this Section shall not constitute grounds for dismissal of the action or affect the consequences of a declaration of taking; however, the Court may remedy the procedural error in a manner equitable to the parties.

Section 110 - Right to Defend Action.

(a) All persons occupying, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend such interest in the property or damages as if

named in the complaint.

(b) This Section provides the sole and exclusive means to defending one's interest in any of the property described in the complaint. The Court shall issue no injunction, stay or other order, or provide any right or remedy not provided for in this Section.

Section 111 - Powers of Court; Precedence Over Other Actions.

(a) The Court shall hear and determine all adverse or conflicting claims to the property sought to be condemned and the claim of damages therefor, and shall determine the respective rights of different parties seeking compensation for the same property.

(b) The Court shall, at the request of any party, give the condemnation action precedence over other civil actions.

Section 112 - Ascertainment and Assessment of Value, Damages and Benefits.

(a) The Court shall ascertain and assess:

(i) The value of the property sought to be condemned;

(ii) The value of all improvements on or to the property, if applicable;

(iii) The value of each and every separate estate or interest in the property;

(iv) The value of each parcel or portion, and each separate estate or interest in the parcel or portion, if the property consists of different parcels or portions;

(v) The damages that will accrue to the portion of the property not sought to be condemned by reason of its severance from the portion sought to be condemned, if the property sought to be condemned constitutes only a part of a larger whole;

(vi) How much the portion not sought to be condemned and each estate or interest in such portion will be benefitted, if at all, by the condemnation proposed by the Tribe. If the benefit is equal to the damages assessed, the

owner of the parcel shall be allowed no compensation except for the value of the portion taken. If the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value; and

(vii) Any effect on the value of the property due to the condition of improvements on the property, or of the defendant's performance or failure to perform all of its obligations pertaining to or arising in connection with the property.

(b) As far as practicable, compensation shall be assessed for each source of damage separately. In ascertaining and assessing value, the Court shall take into all of the applicable items listed in Section 112(a).

(c) Value shall be determined by ascertaining the most probable price estimated in terms of cash in United States dollars or comparable market financial arrangements that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable.

(d) Condemnees shall have the burden of proving the amount of just compensation.

Section 113 - Accrual of Right to Compensation and Damages; Limitation.

(a) For the purpose of assessing compensation and damages, the right to compensation and damages shall be deemed to accrue at the date of the summons, and its actual value at that date shall be the measure of compensation and damages.

(b) If there was a declaration of taking filed, the compensation and damages awarded shall draw interest from the date of the declaration of taking at the weekly average one-year constant maturity (nominal) Treasury yield, as published by the United States Federal Reserve System. Interest shall not be allowed on as much of the compensation as has been deposited into the Court or escrow at the time of the filing of the declaration of taking. Amounts deposited with the Court or escrow shall not be charged with commissions, fees or poundage.

Section 114 - Payment of Compensation; Effect of Failure to Pay.

(a) Payment of compensation and damages may be made to the defendant entitled thereto, or the money may be deposited with the Court or escrow and distributed to the defendant entitled thereto.

(b) If the Tribe does not pay the compensation and damages ordered by the Court within ninety (90) days of such an order, upon a showing to that effect, the Court shall set aside and annul the entire proceedings and restore possession and title of the property to defendant, if possession has been taken by the Tribe.

(c) The Tribe shall be granted extensions of time for payment of compensation for good cause shown.

Section 115 - Final Order of Condemnation; Vesting of Property.

(a) When the final judgment has been satisfied, the Court shall make a final order of condemnation, describing the property condemned and the purposes of the condemnation.

(b) Upon issuance of the final order of condemnation, all interest in the property described shall vest absolutely in the Tribe for the purposes therein specified.

(c) The order of condemnation shall be filed the Land Title Records Office of the Billings Regional Office, as well as the appropriate county register of deeds.

(d) This Section does not apply when the Tribe has filed a declaration of taking.

Section 116 - Possession by the Tribe After Judgment or Pending Appeal; Receipt of Payment as Abandonment; Custody of Money Paid into Court or Escrow; Costs of New Trial.

(a) Unless a declaration of taking has been filed, at any time after judgment is entered, or pending an appeal from the judgment, when the Tribe has paid into Court or escrow for defendant the full amount of the judgment, and such other amounts as required by the Court as a fund to pay further damages and costs which may be recovered in the proceedings, as well as all damages that may be sustained by defendant if for any cause the property is not finally taken for public use, the Court may, upon

notice of not less than ten (10) days, authorize the Tribe, if already in possession, to continue therein (including, in the case of a contract or other intangible property, to continue as the party thereto in the full place and stead of the defendant) or, if not, then to take possession of and use the property (including, to act as the party to and otherwise perform such contract or other intangible property) until final conclusion of the litigation.

(b) The defendant entitled to the money paid into Court or escrow upon any judgment may demand and receive the money at any time thereafter upon an order of the Court. The Court shall, upon application, order the money so paid into Court or escrow delivered to the party entitled thereto upon its filing with the Court either a satisfaction of the judgment or a receipt for the money, as well as a stipulation fully relinquishing that defendant's claims arising in connection with the action or proceeding and that defendant's right, title and interest in and to the property, and abandoning all defenses to the action or proceeding except as to the amount of damages to which he may be entitled if a new trial is granted. Such payment shall be deemed an abandonment of all defenses and claims, except the party's claim for greater compensation.

(c) The money paid into Court or escrow on final judgment shall be held or disbursed upon order of Court.

(d) When a new trial is granted upon application of a defendant, and it fails upon the trial to obtain greater compensation than was allowed upon the first trial, the costs of the new trial, plus a penalty in the amount of thirty percent (30%) of such costs, shall be taxed against defendant in favor of the Tribe.

Section 117 - Costs and Fees. Except as otherwise provided in this Code, each party shall be responsible for its own costs and fees, and no party shall be entitled to recover such costs and fees from any other party.

Section 118 - Dismissal of Condemnation Action.

(a) If the Tribe causes a condemnation action under this Code to be dismissed without prejudice before payment of the compensation and damages awarded the defendant by the Court, the Tribe shall not initiate any eminent domain proceeding with respect to the same property for the same or a related project

for at least one (1) year after the date of the order of dismissal.

(b) At any time after service of the Complaint and before the Court renders judgment on the issues of compensation and damages, the Tribe may dismiss the action without prejudice upon motion to the Court.

(c) The Tribe may not dismiss the condemnation action if a declaration of taking has been filed unless the defendant has agreed to the just compensation offered by the Tribe as a settlement of the action or the Tribe revokes the declaration of taking prior to the defendant receiving just compensation.

Section 119 - Applicability. If a conflict arises between this Code and any other law, this Code controls.

Section 120 - Severability. If any provision of this Code or its application to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this Code that can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.

Section 121 - Sovereign Immunity. Nothing in this Code shall be construed as a waiver of the Tribe's inherent sovereign immunity, or any other immunity or privilege.

History: 2013. Title 16. The Eminent Domain Code was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated December 6, 2013, Resolution No. NABC-2013-353.