

**TITLE 70**  
**NON-PROFIT LAND ORGANIZATION CODE**  
**HOOPA TRIBAL CODE**

ORDINANCE OF THE HOOPA VALLEY TRIBE  
HOOPA VALLEY INDIAN RESERVATION  
HOOPA, CALIFORNIA

ORDINANCE NO: 05-07

DATE APPROVED: JUNE 25, 2007

SUBJECT: ENACTING THE HOOPA NON-PROFIT LAND ORGANIZATION CODE OF THE HOOPA VALLEY TRIBE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: The Tribal Council is charged with the responsibilities to govern all lands within the Tribe's, and

WHEREAS: The Tribal Council has determined that fractionated ownership of land and assets is detrimental to the interest of the Tribe, its members and the Reservation; and

WHEREAS: Failure to proactively address fractionated ownership of lands by the Tribe will invite unnecessary federal intervention over such land in a manner that will be harmful for the Tribe, tribal members and the Reservation as a whole, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council enacts the following Ordinance as part of the Hoopa Tribal Code.

**70.1 Scope of Title**

- (a) The Short Title of this Code is the Hoopa Non-Profit Land Organization Code.
- (b) Unless otherwise provided, the provisions of this Title apply only to non-profit land organizations formed under this code.
- (c) The Tribal Director of Commerce is authorized to carry out the provisions of this Code.

**70.2 Land Owner Responsibilities, Standard of Construction.**

- a) An owner of a fractionated undivided interest owner in land or asset, regardless of the

amount of interest owned, is responsible for:

- 1) ensuring that an asset is managed in a productive manner that is reflective of the interests of its owners and applicable tribal and federal laws;
- 2) ensuring the asset is governed by a functional process at all times;
- 3) assisting with identification and the whereabouts of interest holders;
- 4) making sure the undivided asset is kept in a useable and meaningful state;
- 5) ensuring that the asset is protected;
- 6) directly participating in the management of the asset or, by their non-participation, agrees that such non-participation is deemed to be a delegation of their management responsibilities to another asset owner who participates in the management of the asset, to manage on their behalf, whether such delegation is taken by formal or default action.

**b) Standard of Construction – Asset owner Delegation of Management Responsibilities.**

An owner of undivided interest in land who elects not to participate in the business and affairs of managing the asset shall be deemed to have delegated his/her voting rights and management responsibilities over the asset to another undivided interest holder in the same asset for purposes of carrying out the business and affairs of the land enterprise. Voluntary non-participation in the business and affairs of the land, asset, or enterprise by an undivided interest owner shall be deemed as a default action to delegate his/her land owner responsibilities and authorities to another owner of undivided interests in the same asset to manage on his/her behalf. The enterprise shall establish and maintain a record of all fractionated land owners, whether the land owner participates in the enterprise or not, and shall make a reasonable effort at least annually to report to such individual on the activities of the enterprise.

**70.3. Definition of Terms**

In this Code:

- (a) "Asset" for the purpose of dissolution means any asset of the organization other than those held in trust status by the United States. Assets held in trust status may only be distributed in accordance with a plan approved by the Secretary of the Interior.
- (b) "Corporation" means a non-profit land organization formed pursuant to this Code;
- (c) "Director" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other terms of like import;
- (d) "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:
  - i) any rights such person has as a member of the corporation's staff;
  - ii) by association with a fractionated land owner who has not designated a person as the recipient of his/her interest;
  - iii) any rights such person has to designate a director or directors; or
  - iv) any rights such person has as a director.

**70.4. Purposes and Powers of Land Organization Non-Profit Corporations**

- (a) Every corporation incorporated under this Code may engage in any lawful activity unless

a more limited purpose is set forth in the articles of incorporation.

(b) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation power:

- 1) to sue and be sued, complain and defend in its corporate name.
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing and regulating the affairs of the corporation;
- (4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 70.5 of this Title;
- (9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
- (10) to conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Reservation;
- (11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that further the corporate interest;
- (14) to impose dues, assessments, admission and transfer fees upon its members;
- (15) to establish conditions for admission to membership, admit members and issue memberships;
- (16) to carry on a business;
- (17) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;
- (18) to cease its corporate activities and surrender its corporate franchise.

- (19) to petition for the consolidation of lands/assets in accordance with applicable tribal and federal laws;
- (20) to develop partitioning and other plans that are in the interest of the enterprise and its stockholders, including to establish values in fractionated interests in land for purposes of dividing the undivided interests in land and may otherwise be needed for carrying out the business and affairs of the enterprise; and
- (21) to transfer all rights and assets of a corporation to a for-profit land enterprise incorporated pursuant to Title 69 of the Hoopa Tribal Code, provided that dissolution requirements of a corporation established pursuant to this Code is completed.

**70.5. Limitations**A corporation:

- (1) shall not have or issue shares of stock;
  - (2) shall not pay dividends or make any disbursement of income to its members, directors or officers;
  - (3) shall not loan money or credit to its officers or directors;
  - (4) may pay compensation only up to a reasonable amount to its members, directors, officers or agents for services rendered; and
  - (5) may confer benefits upon its members only in conformity with its purposes.
- (b) A corporation, unless its articles of incorporation or bylaws provide otherwise:
- (1) upon dissolution or final liquidation may make distributions to its members as permitted by this Title, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and
  - (2) may periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.
- (c) No two corporations may preside over the same parcel of land.

**70.6 Incorporator Eligibility/Registered Agent**

- (a) Incorporator Eligibility. Any person 18 years of age or older who owns an undivided interest in land having more than one undivided interest may apply to the Tribal Director of Commerce to establish a land enterprise under this Code.
- (b) Registered Agent. All enterprises formed pursuant to this Code shall appoint a person to accept the service of judicial process on the corporation. All enterprises shall notify the Director of Commerce of any change in the name or address of the corporation's registered agent. Enterprises formed pursuant this Code are deemed to consent to the appointment of the Director of Commerce as their agent for the acceptance of service of process in the event the corporation fails to notify the Director of Commerce of any change in the name or the address of its registered agent. In such cases, service upon the Director of Commerce shall be deemed to be service on such corporation within 10 days thereof, provided, the Director of Commerce shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation at the most recent address noted in the files of the Director of Commerce.

**70.7 Defense of Ultra.**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or

power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a member or director against the doing of any act or acts or the transfer of real or personal property by or to the corporation. If any unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.
- (3) In a proceeding by the Director of Commerce, as provided in this Code, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

#### **70.8 Articles Of Incorporation.**

- (a) Articles of incorporation shall set forth:
  - (1) a corporate name for the corporation that satisfies the requirements of this Title;
  - (2) the corporation is a land organization established pursuant to this Code;
  - (3) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (4) the names and addresses of the individuals who are to serve as the initial directors;
  - (5) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;
  - (6) the name and address of each incorporator;
  - (7) whether or not the corporation will have members; and
  - (8) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
  - (1) provisions not inconsistent with law regarding:
    - (i) managing and regulating the affairs of the corporation;
    - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and
    - (iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.
  - (2) any provision that under this Title is required or permitted to be set forth in the bylaws.
- (c) Each incorporator and director named in the articles must sign the articles.
- (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Title.

### **70.9 Filing of Articles of Incorporation.**

Duplicate originals of the articles of incorporation shall be delivered to the Director of Commerce. If the Director of Commerce finds that the articles of incorporation he or she shall, when all the fees have been paid as in this Title described:

- (1) Endorse on each of such originals the word "Filed," and the effective date of the filing thereof.
- (2) File one of such originals.
- (3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

### **70.10. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation.**

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

### **70.11. Organization Meeting of Directors.**

After the issuance of the certificate of incorporation, an organization meeting, of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice thereof by mail to each director, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting, if each director signs an instrument which states the action so taken.

### **70.12 Admission of Members**

- (a) A corporation shall admit any person who has an interest in a fractionated parcel of land to be managed by the corporation as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.
- (b) Except as provided in its articles or bylaws, a corporation may admit members having no fractionated interests in land for no consideration or for such consideration as is determined by the board.

### **70.13. Differences in Rights and Obligations of Members.**

- (a) Except as provided in paragraph (b) of this section, all members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. Members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.
- (b) Unless otherwise provided in the articles of incorporation, voting and other rights and benefits in the enterprise will be determined based on the individual's percentage of undivided interest in the land/asset, not including any value added by operation of the corporation.

**70.14. Transfers**(a) Except as set forth in or authorized by the articles or bylaws, no member may transfer a membership or any right arising therefrom.

(b) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

**70.15. Resignation**(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation.

(c) Resignation of a member having a fractionated interest in trust lands or assets does not prevent the corporation from carrying out its activities.

**70.16. Termination.**

(a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable under the circumstances and is carried out in good faith.

(b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.

(c) A procedure which departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

**70.17 Purchase of Memberships.**

(a) A corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws.

(b) A corporation shall not purchase its memberships unless:

(1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) the corporation's total assets would at least equal the sum of its total liabilities.

**70.18. Annual Meeting of Members.**

A corporation with members shall establish in its articles of incorporation or by-laws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefore is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

**70.19. Special Meetings of Members.**

(a) A corporation shall hold a special meeting, of members:

(1) on call of its board of directors or the person or persons authorized to do so by the