WHITE MOUNTAIN APACHE

NATURAL RESOURCES CODE

Effective April 24, 2013

WHITE MOUNTAIN APACHE TRIBE
NATURAL RESOURCES CODE

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WHITE MOUNTAIN APACHE
NATURAL RESOURCES CODE

[NOTE: The Natural Resources Code is derived from Ordinance No. 181, enacted December 2, 1992; Ordinance No. 214, enacted February 12, 1998; Ordinance No. 232, enacted September 25, 2007; Ordinance No. 238, enacted August 26, 2009; and Ordinance No. 258, enacted April 24, 2013.]

CHAPTER ONE
MISCELLANEOUS FOREST PRODUCTS

SECTION 1.0 PURPOSE

The development, maintenance, enhancement and protection of the wood lands and forest lands of the White Mountain Apache Tribe; to ensure the application of sound silvicultural and economic principles to the harvesting of miscellaneous forest products as defined herein, prevention of trespass and to provide for the enforcement of rules and regulations pertaining to miscellaneous forest products.

SECTION 1.1 DEFINITIONS

A. **"Closed Areas"** means any area on the reservation in which entry by person or vehicles is prohibited.

B. **"Commercial Forest Land"** means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

C. **"Fence Post"** shall mean a post not less than ten (10) feet with a diameter of 14 inches or less and it must be cut no more than 4 inches off the ground.

D. **"Forest or Forest Land"** 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 percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

E. **"Forest Products"** means marketable products extracted from tribal forests, such as: timber, timber products; including, ties, bolts, logs, pulpwood, fuel wood, posts, poles and split products; bark; Christmas trees, stays, branches, firewood, berries, pinyon nuts, roots, acorns, syrups, wild rice and herbs, and other marketable material.

F. **"Forest Resources"** means all the benefits derived from tribal forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation and aesthetic or other traditional values of tribal forest land.

G. **"Indian"** means a member of an Indian tribe.

H. **"Indian Forest Land"** means Indian or tribal land, including commercial, non-commercial, productive and nonproductive timber land and woodland 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.

I. **"Indian tribe or tribe"** means any Indian tribe, the White Mountain Apache Tribe, band, nation, rancheria, pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

J. **"Member"** means a person who is an enrolled member of the White Mountain Apache Tribe.

K. **"Miscellaneous Forest Products"** means forest products other than those permitted to be harvested pursuant to approved timber sales authorized by Tribal Council Resolution, tribal or BIA approved thinning contracts, logging contracts and subcontracts, and fuel breaks and green belts approved by the Bureau of Indian Affairs or by Tribal Council resolution.

L. **"Motorized Vehicle"** means any vehicle propelled by motor or engine.

M. **"Non-member"** means a person who is not an enrolled member of the White Mountain Apache Tribe.

N. **"Non-member Indian"** means a person who is a member of any federally recognized Indian Tribe other than the White Mountain Apache Tribe.

O. **"Reservation"** means the Fort Apache Indian Reservation of the White Mountain Apache Tribe comprised of all lands within the exterior boundaries of the Fort Apache Indian Reservation.

P. **"Secretary"** means the Secretary of the Interior or his or her authorized representative.

Q. **"Stumpage Value"** means the value of a forest product prior to extraction from tribal forest land.

R. **"Trespass"** means the removal of forest products from tribal forest land or the severance of or injury to trees and plants on tribal forest land except when authorized by law and applicable federal or tribal regulations or authorization. Trespass includes any damage to forest resources on tribal forest lands resulting

from activities under contract or permits obtained through fraud or material misrepresentation of fact. Trespass also includes unlawful possession of tribal forest products and the unlawful or wanton injury of or destruction of any tree or trees growing, standing, or being upon tribal forest lands of the White Mountain Apache Tribe. Fire Trespass is the act of willfully or accidentally and without authority, setting fire to or causing to be kindled, any timber, underbrush, grass or other inflammable material on and within tribal forest lands. It includes fires, authorized or unauthorized, with a point of origin on or off the trespassed property, which are left unattended or unextinguished and allowed to burn out of control and cause damage to tribal property or which require expenditure of public or private or tribal funds to control or extinguish.

S. **"Tribal Council"** means the White Mountain Apache Tribal Council duly assembled.

T. **"Tribal Court or Court"** means the courts of the White Mountain Apache Tribe.

U. **"Woodland"** means forest land not included within the timberland classification, stocked or capable of being stocked, with tree species of such form and size that the wood content is generally marketable within the region for products other than lumber, pulpwood or veneer.

V. **"Tribal Forest Rangers"** means those officers duly commissioned by the Whiteriver Police Department with authority to enforce the Miscellaneous Forest Products ordinance and tribal codes, rules and regulations governing protection and conservation of tribal forests and woodlands.

SECTION 1.2 TIMBER PERMITS

A. A Timber Cutting Permit (Form 5-5331) is required for harvesting miscellaneous forest products for any purpose except as exempted pursuant to Section 1.15. Permits will be issued to tribal and non-tribal members, except as otherwise provided for in this Code. Non-tribal members will be allowed to cut in designated areas only in accordance with Section 1.23 of this Code. For tribal members a tribal census number is required, except under the provisions of Section 1.20 of this Code.

B. Permits shall be issued at the Bureau of Indian Affairs, Fort Apache Agency Forestry Office or the Tribal Forestry Office. Vehicles transporting miscellaneous forest products shall be identified on the permit with a description of the vehicle and license plate number. If an alternative vehicle is to be used, either Forestry office must be notified by providing it with the description of the alternate vehicle and license plate number.

C. Tribal and non-tribal members purchasing a paid permit pursuant to Section 1.17 and Section 1.23, or a free use permit pursuant to Section 1.15, shall receive

load removal tickets which shall be displayed in plain view by attaching said tickets to the rear of the vehicle.

D. A copy of instructions and map shall be attached to each permit issued.

SECTION 1.3 STUMPAGE VALUE

A. The stumpage value of forest products harvested without formal contract in fiscal year October 1 through September 30, by any individual under free-use cutting authority shall not exceed $2,500.00.

B. The maximum stumpage value of forest products harvested without formal contract under paid permit authority in fiscal year by any individual is $10,000.00.

SECTION 1.4 REMOVAL, DESTRUCTION, CUTTING OF GREEN TREES PROHIBITED

[NOTE: Section 1.4 B was added by Ordinance No. 238, enacted August 26, 2009.]

A. It shall be a violation for any person, without lawful authority, to willfully injure, sever, girdle, cut or remove from tribal forest land, for any purpose, any green tree or green wood, timber or shrub. Proof of tribal ownership of the premises and commission of the acts by the trespasser or violator shall be prima facie evidence that the acts were committed willfully, intentionally, and without the required consent.

B. It shall be a violation for any Tribal member or Non-Tribal member to willfully harvest teepee poles on the Fort Apache Indian Reservation.

SECTION 1.5 TRANSPORTING FOREST PRODUCTS; BILL OF SALE

[NOTE: Section 1.5 B was amended by Ordinance No. 214, enacted February 12, 1998; Section 1.5 C was added by Ordinance 238, enacted August 26, 2009.]

A. Hauling miscellaneous forest products on the reservation without a bill of sale or timber cutting permit is prohibited, except under Section 1.15 of this Code.

B. There shall be no hauling of any miscellaneous forest products off the reservation during the hours of 5:00 p.m. to 8:00 a.m.

C. It shall be a violation for any person to cut, harvest or haul firewood after dark on or off the Fort Apache Indian Reservation.

D. The bill of sale shall contain a description by local landmarks of where the forest products were cut, the volume or amount and species purchased, description of the vehicle transporting the products, names, address and signatures of both purchaser and seller. The bill of sale or timber cutting permit must be carried by the person in charge of transporting forest products on the reservation and must be exhibited to any officer of the

law, Tribal Game and Fish Department Officer, Woodlands Enforcement Officer or Bureau of Indian Affairs personnel, upon request.

E. Miscellaneous forest products transported on the reservation without a bill of sale or timber cutting permit, except as provided for in Section 1.16, Free Use Cutting Without Permit, shall be subject to confiscation by the Tribal Police, Tribal Game and Fish Officers, and Tribal Forest Rangers. Forest products species not identified on a timber cutting permit will be considered illegal and subject to confiscation. Confiscated products shall be impounded at a designated compound. Forest products will be distributed to the four elderly rest homes on the reservation, to disabled persons, and/or sold by the Bureau of Indian Affairs, the proceeds of which will be transferred to the Tribe after disposition of any citation issued for violations. Any violation of this section shall be punished as an offense pursuant to applicable provisions of this Code.

SECTION 1.6 CHRISTMAS TREES

A. Christmas tree cutting by anyone is prohibited in the following areas:

1. Mt. Baldy Wilderness Area;

2. Within 1/4 mile of any spruce clear cut blocks as defined in Tribal Resolutions 79-165 and 79-166;

3. Within 1/4 mile of established lakes and campgrounds;

4. Sunrise Ski Park;

5. Within 200 feet of any state highway, which includes the Hawley Lake Road.

B. Cutting a large tree just for the top section (to take home for the Christmas tree product) is prohibited.

C. The maximum stump height shall not exceed ten (10) inches on the uphill side for a legally cut Christmas tree.

D. Violators of this section will be subject to the penalties set forth in Section 1.4 of this Code.

SECTION 1.7 NON-TRIBAL MEMBER SPOUSE

A. A non-tribal member married to a tribal member must be accompanied by his/her spouse and/or tribal member children when cutting and/or transporting miscellaneous forest products on the reservations Non-tribal members cannot sell miscellaneous forest products personally; only the enrolled tribal member spouse has the right to sell forest products. This section will apply to all miscellaneous forest products harvested

for resale or exchange for goods or services by tribal members. Violation of this section is an offense.

SECTION 1.8 FIREWOOD CUTTING: AREAS PROHIBITED

A. Firewood cutting is prohibited within 200 feet from the edge of streams, lakes, stock ponds, cienegas, campgrounds, homesite lot boundaries, state highways, Sunrise Ski Park, all closed areas and within 200 feet of the exterior perimeters of tribal ceremonial grounds. All tops and limbs shall be utilized to a four inch diameter. Maximum stump height shall not exceed 12 inches on the uphill side.

B. Firewood cutting will not be allowed in areas where there is an active logging operation in progress. After logging operations have ceased in an area, tribal community services may enter the area with a special free use permit issued by BIA or Tribal Forestry to cut and remove push green trees or cut green trees from logging road construction and shall remove and store said wood at a designated wood yard for disposition by the Tribal Council. No other persons or entity shall be permitted to so enter and cut or remove said push or cut green trees.

C. Tribal Forestry shall have the option to recommend to the Tribal Council that certain sections of the reservation be closed for fuel wood cutting, provided no legal fuel wood exists in such areas.

SECTION 1.9 FIREWOOD CUTTING: SPECIES DESIGNATED: RESALE

[NOTE: Section 1.9 C was amended by Ordinance No. 258, enacted April 24, 2013.]

A. Only dead standing and dead down Rocky Mountain juniper, Utah juniper, One-Seed juniper, Pinyon, Oak, Spruce and Aspen will be harvested as firewood products for resale under a paid permit.

B. Green Shaggy Bark Juniper (Rocky Mountain, Utah and One-Seed) can be cut for firewood under paid permit in designated areas on the reservation. These cutting blocks will be identified by Bureau of Indian Affairs or Tribal Forestry personnel. These blocks will be identified at the time the permit is issued.

C. Dead standing and dead down Alligator juniper firewood is available to tribal members for home use under a free use permit. Alligator Juniper firewood may be harvested by enrolled members of the White Mountain Apache Tribe for resale to enrolled members of the White Mountain Apache Tribe, but shall not be harvested for resale to non-tribal members or to anyone off the Fort Apache Indian Reservation.

SECTION 1.10 FIREWOOD CUTTING: SPECIES PROHIBITED DURING AUTUMN

A. During the period October 15 through May 15 no one is permitted to cut standing Gambel oak or Aspen for firewood due to the fact that Gambel oak and Aspen

leaves fall during the autumn,, which makes it difficult to determine which trees are dead. Anyone cutting standing or hauling green Gambel oak and Aspen for firewood during the period October 15 through May 15 shall be guilty of an offense.

B. Tribal members may cut dead and down Aspen or Oak species for firewood. Non-tribal members may cut Aspen pursuant to Section 1.21.

SECTION 1.11 ENFORCEMENT OF FOREST REGULATIONS

A. Cutting practices will be monitored by Tribal Forest Rangers and Bureau of Indian Affairs forestry personnel. The Tribal Police, Tribal Game and Fish Officers and Tribal Forest Rangers shall have authority to enforce this ordinance through field inspections. Copies of each permit issued will be sent to the Tribal Police, Game and Fish Officers, and Tribal Forest Rangers. National Forest Service Personnel and off-reservation law enforcement officers will be contacted periodically to assist in monitoring firewood hauling off the reservation.

SECTION 1.12 DUMPING PROHIBITED AT FIREWOOD CUTTING SITES

A. It is prohibited to dump trash of any type at firewood cutting sites. All man-made litter, including, but not limited to, oil cans, fuel containers and beverage containers shall not be left scattered at wood cutting sites. All such litter must be hauled out of the forest along with the firewood. Violators may be prosecuted pursuant to the Tribal Game and Fish Code, Section 7.2(6) Litter roads, roadsides, campgrounds, waters or any tribal land on the reservation - $100.00, and in addition, penalties prescribed in Section 1.29 of this Code.

SECTION 1.13 CLEARING ACCESS ROADS PROHIBITED

A. It is prohibited to cut fences, leave gates open and clear access routes to firewood sources from established forest roads. Anyone damaging fences will be fined $50.00 pursuant to the Tribal Game and Fish Code, Section 7.2(14) (Cut, damage, or destroy any fence on the Reservation $50.00). Anyone found guilty of this Section will not be issued a paid or free permit for two (2) years; and, in addition, penalties prescribed in this Code.

SECTION 1.14 REPORTING VIOLATORS OF FORESTRY REGULATIONS: SILENT WITNESS

A. Any person having information concerning violations of this ordinance, and who reports said violations to authorities which leads to the arrest and conviction of said violator, will be paid the amount of $75.00. The identity of any person reporting said information shall be kept strictly confidential.

SECTION 1.15 FREE USE PERMIT

[NOTE: Section 1.15 was amended by Ordinance 238, enacted August 26, 2009.]

A. One Free Use Permit shall be issued to each household consisting of any enrolled adult Tribal member (18 years old and older). Permittees with off-reservation addresses shall provide proof of residence, including but not limited to, a utility bill and a phone bill.

B. Free use permits will be issued to reservation schools, recognized religious organizations, tribal organizations and local public service units for forest products used within the reservation.

C. Recognized religious organizations with non-tribal member pastors shall have tribal members cut firewood for their respective churches. Churches that are heated solely by woodstoves shall have access to an unlimited supply of firewood.

D. Free use permits shall be issued for transplants for landscaping around homes on the reservation. Areas designated for transplant digging shall be indicated on the permit.

E. Free use permits shall be issued for the annual limit of products to be cut for the duration of the present fiscal year.

F. Free Use Products:

PRODUCT	SPECIES
Christmas Tree	Pinyon, Spruce, Douglas fir and White fir. Pinyon shall be six feet or less.
Firewood	All dead standing and down, except standing Ponderosa pine snags are available as Free Use Product between September and December each year. See Section 1.5(G.) below for Seasonal Permit Fees from January through August each year.
Fence Post/stays	Juniper, all species.
Poles	Aspen and Ponderosa pine (TSI slash only)
Transplants	All Reservation Species.

G. Seasonal Permit Fees: Effective January 1, 2010, all Tribal Members shall be required to obtain a permit for harvesting firewood between January 1st and August 31st each year. The permit shall be $5.00 per cord and shall be good for three (3) days.

Exceptions: This Section shall not apply to harvesting of firewood for wakes, ceremonies, churches with stoves and camp meetings. From September 1st through December 31st each year, Section 1.15 (E.) and (F.) shall apply. See chart below:

JAN	FEB	MAR	APR	MAY	JUN	JULY	AUG	SEPT	OCT	NOV	DEC
Paid Permit	Paid Permit	Paid Permit	Paid Permit	Paid Permit	Paid Permit	Paid Permit	Paid Permit	Free Use	Free Use	Free Use	Free Use

SECTION 1.16 FREE USE WITHOUT PERMITS

A. No permit is required for tribal members to cut willow, cottonwood, aspen, fir, pinyon, juniper, walnut or Gambel oak saplings/branches. Aspen shall not be cut in highway rights-of-ways and within 200 feet of right-of-way fences. These products shall be used for ceremonials and other home uses.

B. No permit is required for tribal members to cut firewood for wakes and ceremonials. There is no limit on the amount under this section.

C. No permit is required for tribal members to cut one Christmas tree per household living on the Fort Apache Indian Reservation.

D. No permit is required for campers with valid camping permits to gather and use firewood while camping on the Fort Apache Indian Reservation.

SECTION 1.17 PAID PERMITS

A. The following stumpage rates shall apply to all miscellaneous forest products harvested for resale or exchange for goods or services by tribal members and any tribal enterprise. Fort Apache Timber Company is included under this section for their annual Christmas tree donations to customers. Paid permits require payment in advance. The load removal ticket received will be attached on the rear of the vehicle. Unused balances will not be refunded, nor the permit expiration date extended. Tribal members are prohibited from selling Christmas trees.

B. Rates established in this section and Sections 1.18, 1.20, 1.21, 1.22 and 1.23A may be changed annually by Tribal Council Resolution without amending this Code.

RATES

PRODUCT	SPECIES	TRIBAL MEMBER	TRIBAL ENTERPRISE
Christmas Tree	Pinyon, Spruce, Douglas-Fir and White Fir. Pinyon Pine shall be six feet or less in height	N/A	$2.00/Tree

PRODUCT	SPECIES	TRIBAL MEMBER	TRIBAL ENTERPRISE
Firewood	All dead standing and down, Ponderosa pine snags and Alligator Juniper	$4.00/cord	$7.00/cord
Fence Post	All Junipers, and Oak	$0.10/post	$0.25/post
Stays	All Junipers, Oak, Aspen, Ponderosa pine and dead snags	$0.02/stay	$0.04/stay
Poles	Aspen	$0.05/pole	$1.00/pole
	Ponderosa pine (TSI slash only) less than 4.0" dbh.	$0.06/pole	$0.12pole
	4.1" to 6.0" dbh.	$0.08/pole	$0.16/pole

SECTION 1.18 PAID PERMIT DURATION

Value of Permit	Time Limit of Permit
$ 1.00 - $ 5.00	3 days
$ 5.01 - $ 10.00	7 days
$ 10.01 - $ 20.00	15 days
$ 20.01 - $ 40.00	30 days
$ 40.01 Plus	As Indicated

SECTION 1.19 PROVISIONS FOR NON-TRIBAL INDIVIDUALS HAULING PURCHASED FIREWOOD OFF THE RESERVATION

A. Non-tribal individuals are prohibited from picking up purchased firewood in the forest or woodland areas. The following designated areas in the respective communities will be pick up points for transporting large volumes of purchased firewood off the reservation:

1. Hondah Junction

2. Whiteriver - across from BIA Fire Management office near the livestock corrals.

3. Carrizo Junction

4. Cibecue - Police Station, or within limits of the community.

SECTION 1.20 PERMITS FOR CONSTRUCTION PROJECTS ON THE RESERVATION

A. All activities by any tribal or government entities which require removal of commercial trees 5.0 inches at diameter breast height and larger shall require a permit.

B. Trees designated for removal shall be measured and marked by Bureau of Indian Affairs or Tribal Forestry personnel.

C. Prior to tree cutting operations the permittee shall pay in advance for the trees at the following authorized rates:

PRODUCT	STUMPAGE RATE	CASH BOND*
Sawtimber	$100.00/MBM	$55.00/MBM
Pulpwood	$ 25.00/Cord	$25.00/Cord

* Minimum Cash Bond shall be $40.00.

D. The cash bond shall be deposited with the Bureau of Indian Affairs Agency Superintendent to ensure all slash is properly disposed of in a manner acceptable to Bureau of Indian Affairs or Tribal Forestry. This will include burning or hauling to a proper disposal site. The Permittee is liable for all damages from the slash burning to adjacent reserve timber or property. Slash disposal shall be completed by the expiration date of permit or the bond will be forfeited.

E. The period of time f or which a permit is valid shall be determined at the time the permit is issued and may vary dependent upon the needs of a particular project.

SECTION 1.21 PROVISION FOR HARVESTING DEAD SPRUCE AND ASPEN

A. Timber cutting permits and/or sales may be made to tribal and non-members to harvest dead spruce, aspen and other salvage species of trees. Permits shall not exceed a stumpage value per person of $10,000.00 per year and will not be sold for less than $10/MBF gross scale for dead spruce or $5.00/cord for green or dead Aspen, or dead spruce firewood. Fireplace pellet species shall be sold at $5.00/green ton.

SECTION 1.22 RECOMMENDED MINIMUM SELLING PRICES FOR FIREWOOD SOLD OFF RESERVATION

A. The following is the recommended minimum selling prices of various tree species sold for firewood products off the reservation; the Tribal Council may revise these prices annually by resolution without amending this ordinance.

Species	Recommended Minimum Selling	½ Ton* Pickup	3/4 Ton* Pickup
Oak	$ 125/Cord	$75.00	$95.00
Shaggy Bark Juniper	$ 70/Cord	$45.00	$55.00
Douglas-fir	$ 70/Cord	$45.00	$55.00
Aspen, Spruce	$ 65/Cord	$40.00	$50.00

* A ½ or 3/4 ton pickup loaded and stacked on a pickup without side boards or racks. Stacked this way a pickup will carry only a portion of a cord of wood.

B. The following estimates firewood volume for two major types of vehicles used to haul wood off the reservation:

Truck Type	Estimated Cords
3/4 Ton Long Wheel Base pickup with side racks	Approximately 1 cord
½ Ton Short Wheel Base pickup with side rack	Approximately 3/4 cord

SECTION 1.23 SPECIAL USE: NON-TRIBAL MEMBERS

A. Non-Tribal members may cut firewood only in areas designated by Tribal Forestry personnel. These areas will be on timber sales which have been recently completed. Dead and down Ponderosa pine, Douglas fir, White fir, Aspen or Spruce will be the only species allowed to be cut for firewood. Cost of permit will be $5.00/cord. A removal ticket containing all pertinent information shall also be required to be placed on the rear of the vehicle where it is plainly visible.

B. Cutting and Hauling of firewood from these designated areas shall be authorized from 9:00 a.m. through 3:00 p.m., Monday through Thursday.

C. It shall be a violation for a Non-Tribal member to enter the Fort Apache Indian Reservation and harvest firewood for non-commercial uses. See Section 1.2 and Section 1.23(A) above.

SECTION 1.24 REGULATION OF MOTORIZED VEHICLES

A. Operation by non-member of All Terrain Vehicles (ATV's) is prohibited on the Fort Apache Indian Reservation.

B. No person shall operate any motorized vehicle within the Reservation unless such vehicle is currently licensed by a State of Indian Tribe for unrestricted highway use, except as otherwise provided in the Health and Safety code. This provision shall not apply to Tribal Government or department vehicles used for Tribal purposes, or to vehicles operated by members.

C. No person shall operate any motorized vehicle except on designated roads. This provision shall not apply to:

1. Tribal or federal employee's acting within the scope of their employment.

2. Person with special permits who are acting within the conditions of the permit.

3. Emergency situations, such as fires or other disasters, or when otherwise necessary to protect life or property.

D. If the department determines that the operation of motorized vehicles in certain areas may be harmful to the Natural resources, the department may order the area closed to motorized vehicle for a period of time as approved by the Tribal Council. The department shall post notices on the main roads entering such closed areas and at other locations necessary.

E. Violation of this section shall be a Class Two Civil Offense.

SECTION 1.25 PROHIBITED ACTIVITIES: PROPERTY

A. Except as otherwise permitted by this Code, in addition to all other activities prohibited by this Code, the following acts are unlawful within the boundaries of the Fort Apache Indian Reservation.

1. Mutilating, defacing, disturbing, injuring, damaging or destroying, any natural item, including but not limited to Wildlife, rocks, stones, fossils or other property of the White Mountain Apache Tribe, including fences and department property.

2. Removing any natural item including but not limited to Wildlife, rocks, stones, fossils, or other property of the White Mountain Apache Tribe, including fences and department property.

3. Digging in, excavating, disturbing, injuring, destroying, or in any way damaging a paleoecological, prehistoric, historic or archaeological resource, structure, site, artifact or property.

4. Removing any paleoecological, prehistoric, historic or archaeological resource, structure, site, artifact or property.

5. Causing a fire other than a campfire.

6. Removing, destroying or cutting any green trees or even dead trees on Reservation.

B. Violation of this section shall be a Class Three Civil Offense.

SECTION 1.26 PROHIBITED ACTIVITIES: OCCUPATION AND USE

A. Except as otherwise permitted by this Code, in addition to all other activities prohibited by this Code, the following acts are unlawful within the boundaries of the Fort Apache Indian Reservation.

1. Building, attending, maintaining, or using a fire outside of a stove, grill, fireplace or fire ring.

2. Possessing, discharging or using any kind of firework or other pyrotechnic device.

3. Swimming entering into or being in a body of water, except while fishing and in possession of a valid fishing permit.

4. Entering a Closed Area.

5. Entering a Special Use Area without a proper Special Use Permit.

6. Abandoning or leaving a fire unattended.

B. Violation of this Section shall be a Class One Civil Offense.

SECTION 1.27 FIELD BOND

A. Upon issuing a citation, an authorized officer may demand that a suspected violator post a field bond in an amount equal to the maximum amount of the civil penalty plus liquidated damages amount for the violation alleged in the complaint.

B. Bond property may be cash or other property which the officer reasonably believes is valued at an amount at least equal to the required bond amount.

C. Field bond is justified and shall be collected by the officer using any reasonably necessary non-deadly force, when in the officer's judgment:

1. The violator is not a resident of the Reservation, or

2. The violator does not own sufficient valuable property which is permanently affixed to or stored on the Reservation, or

3. The violator refuses to sign the complaint, or

4. The violator refuses, or cannot be positively identified, or

5. Any other reason which leads the officer to believe that the violators' presence at the court hearing for the violation cannot be assured, or the violators' willingness or ability to pay the fine, penalty, or liquidated damages assessment is reasonably questioned.

D. Any person who believes that a field bond has been required unlawfully or unreasonably may request in writing a bond hearing before the Tribal Court. Bond hearings shall take place within three (3) days of the filing of such request, excluding weekends or other court holidays.

E. Non-cash bond property may be redeemed at any time during normal business hours at the department office by the posting of a cash bond or payment of damages. Post judgment redemption must occur, if at all within thirty (30) days of the entry of judgment, unless an appeal is filed.

F. If the suspected violator is found liable for the alleged violation, and there is no appeal, the bond will be applied in satisfaction of the judgment. Failure to appear at the hearing will result in entry of default judgment and forfeiture of bond. Non-cash bond property will be sold at an auction and the proceeds will be applied to the judgment. Any excess will be returned to the violator.

G. If the suspected violator is found to be not liable for the alleged violation, the bond property will be returned.

CASH BOND TRUST FUND

Within two (2) business days of being posted, all cash bonds shall be deposited in a trust account established by the Tribal Court for that purpose.

BOND PROPERTY STORAGE

All bond property shall be inventoried, labeled with the defendant's name and citation number and placed in secured storage at the department within twenty-four (24) hours of being posted.

SECTION 1.28 CLASSIFICATION OF CIVIL PENALTIES

A. The maximum civil penalties for violations of this Code shall be:

1. Class One -- Fifty dollars ($50.00)

2. Class Two -- One Hundred dollars ($100.00)

3. Class Three -- Two Hundred Fifty dollars ($250.00)

B. A civil penalty of up to three times the amount of the penalty for that class of offense may be imposed if:

1. The violator is found liable for the second or any subsequent violation of the same provision.

2. The violator issues a check in payment of a penalty imposed under this Code knowing there are insufficient funds on deposit with the bank to ensure payment of the check on its presentation.

SECTION 1.29 FINES, IMPRISONMENT, CIVIL PENALTIES EXCLUSION FROM RESERVATION; ENFORCEMENT REMEDIES FOR PROHIBITED CONDUCT

A. Any person, Indian or non-Indian, who is found guilty of conduct or acts prohibited by this ordinance shall be guilty of an offense and punished as follows:

INDIAN OFFENDERS

1. **CONVICTION OF FIRST OFFENSE:** If an Indian, imprisonment for a period not to exceed twenty-five (25) days, a fine of not less than Fifty ($50.00) Dollars nor more than Two Hundred Fifty ($250.00) Dollars, or both fine and imprisonment. In addition, any seized miscellaneous wood product shall be forfeited to the tribe.

2. **CONVICTION OF A SECOND OFFENSE WITHIN TWENTY FOUR MONTHS OF THE FIRST CONVICTION:** If an Indian, imprisonment of not less than one (1) day nor more than fifty (50) days and a fine of not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars, or both fine and imprisonment. In addition, any seized miscellaneous wood products shall be forfeited to the Tribe.

3. Alternatively, or in addition to the punishment prescribed in Section 1.29A.1. and 2., the Court may require any Indian convicted of violating this ordinance to perform not less than twenty-five (25) but not more than two hundred fifty (250) hours of community service for the White Mountain Apache Tribe.

NON-INDIAN OFFENDERS

4. Non-Indian violators shall be subject to prosecution pursuant to Federal trespass, the Lacey Act and other applicable federal statutes and regulations and to tribal civil penalties and remedies as follows:

a. **CONVICTION OF A FIRST OFFENSE:** a civil penalty of not less than one Hundred ($100.00) Dollars nor more than one Thousand ($1,000.00) Dollars and forfeiture of all seized miscellaneous wood products to the tribe.

b. **CONVICTION OF A SECOND OFFENSE WITHIN TWENTY-FOUR (24) MONTHS OF THE FIRST CONVICTION:** a civil penalty of not less than Five Hundred ($500.00) Dollars nor more than Two Thousand ($2,000.00) Dollars and forfeiture of all seized miscellaneous wood products to the tribe.

c. In addition to civil penalties, the court may award payment of costs associated with damage to tribal forest land, including, but not limited to, rehabilitation, reforestation, loss of future revenue, loss of productivity and damage to other forest resources.

d. The court may also charge the trespasser/violator with payment of all reasonable costs associated with the enforcement of these regulations, beginning with detection and including all processes through prosecution and collection of the settlement; such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs and attorneys fees.

e. Payment of civil penalties may involve collection of cash, forfeiture of real and personal property, and garnishment. Any cash and other proceeds realized from forfeiture of equipment or other goods or forest products damaged or taken in the trespass shall be applied to civil penalties and other expenses incurred by tribal enforcement agencies. After disposition of real and personal property to pay civil liability penalties and enforcement costs of the trespass or violation, any residual or left over funds shall be returned to the trespasser/violator.

B. SEIZURE OF EVIDENCE: ISSUANCE OF CITATIONS

Tribal and Federal law enforcement agencies including Tribal Forest Rangers acting pursuant to this Code may prohibit the removal of forest products from tribal land or have such forest products seized for safe keeping and use as evidence of trespass and violation of this Code.

1. Whenever an individual authorized to enforce against trespass or violations of this ordinance has probable cause to believe that trespass activity has occurred or a violation of this ordinance, such law enforcement individual may seize and take possession of the products and/or equipment involved in the trespass or violation. All equipment seized shall be kept in the custody of the law enforcement agency for use as evidence unless otherwise ordered by the tribal court. Tribal agencies or individuals authorized to enforce this ordinance shall simultaneously with any seizure give written notice of the seizure to the party in possession of the products, tools or equipment involved in the trespass or violation. Such notice shall include a statement that the seizure may be appealed to the Tribal Court.

2. Tribal Game and Fish officers, Tribal police, Federal law enforcement officers, and Tribal Forest Rangers personnel may issue citations giving notice to the trespasser, buyer, possessor, or violator that a trespass or violation has occurred, basis for the determination, providing notice of the location of the tribal court and a date in which to answer the citation. The accused trespasser or violator shall be required to sign a consent for appearance, and if the individual so accused refuses to sign the consent, said individual may be arrested and taken to the Whiteriver jail for booking and arraignment before the Tribal Court. Non-Indians shall be turned over to the custody of Bureau of Indian Affairs law enforcement custody.

3. Any firewood seized pursuant to this chapter shall be impounded in a designated yard until such time as the violator/trespasser has pled guilty or has been convicted whereupon said wood shall be distributed to designated homes for the elderly or to disabled persons in need of firewood. An inventory will be kept by the tribal enforcement agency of all wood seized and delivered with the date of delivery to elderly homes or those of disabled persons. If an accused is found innocent of the offense, any seized wood, equipment or tools shall be returned forthwith to the accused.

C. Violation of this ordinance by a non-Indian or nonmember of the White Mountain Apache Tribe may result in a petition for his or her exclusion from the reservation or referral to the United States Magistrate, the Bureau of Indian Affairs, or U.S. Attorneys for prosecution in addition to the civil penalties and remedies specified herein.

SECTION 1.30 REPEAL OF CONFLICTING CODE PROVISIONS

Section 2.21, Tribal Criminal Code and Section 7.2 (13) of the Tribal Game and Fish Code are hereby repealed and superseded by this Code.

SECTION 1.31 SEVERABILITY

If any provision of this Code, or the application thereof, is held invalid, the remainder of this Code, or other applications of such provision, shall not be affected.