

# **COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**

## **TRIBAL LEGAL CODE**

### **TITLE 225**

#### **Eminent Domain**

##### **255-10 Authorization and Repeal of Inconsistent Legislation.**

The Cow Creek Band of Umpqua Tribe of Indians is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (P.L. 97-391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgement Funds Act of October 26, 1987 (P.L. 100-139); and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally supervised constitutional ballot, on July 8, 1991.

Pursuant to Article III, Section 1 of the Tribe's Constitution, the Cow Creek Tribal Board of Directors is the governing body of the Tribe. Pursuant to Article VII, Section 1 (d) of the Tribe's Constitution, the Board has the power to "administer the affairs and assets of the Tribe". Pursuant to Article VII, Section 1 (g) of the Tribe's Constitution, the Board has the power to "manage all economic affairs and enterprises of the Tribe...". Pursuant to Article VII, Section 1 (i) of the Tribe's Constitution, the Board has the power to "enact ordinances and laws governing the conduct of all persons or tribally-owned land; to maintain order and protect the safety, health, and welfare of all persons within the jurisdiction of the Tribe; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations...". Pursuant to Article VII, Section 1 (m) of the Tribe's Constitution, the Board has the power "purchase or accept any land or other property for the Tribe." Pursuant to Article VII, Section 1 (p) of the Tribe's Constitution, the Board has the power to "deal with questions concerning the encumbrance, lease, use, management, assignment, zoning, exchange, mortgage, purchase, acquisition, sale placement in trust and disposal of land and other assets owned by, or held in trust for, the Tribe; and regulate land use and development in areas within the Tribe's jurisdiction". Pursuant to Article VII, Section 1 (t) of the Tribe's Constitution, the Board has the power "have such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe." Pursuant to Article X of the Tribal Constitution, the Board has the power to "...establish a tribal judiciary system and provide or authorize support for that system".

Pursuant to the foregoing and the Tribe's retention of the full spectrum of sovereign powers, the Board has the authority, desires to and does hereby establish this Title 255 for the purpose of providing a procedure for taking private property for public use which protects the rights of all parties; protecting and maintaining the ability to control and administer infrastructure, and real

and personal property rights necessary to aid or assist the exercise of government within tribal jurisdiction; and for the purposes of facilitating economic development of the reservation.

Any prior Tribal regulations, resolutions, orders, motions, legislation, codes or other Tribal laws which are inconsistent with the purposes and procedures established by this Title 255 are hereby repealed to the extent of any such inconsistency.

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*

## **225-20 Definitions**

As used in this Title 255:

- (a) “Date of Taking” is that date set forth in the Resolution, or the date of filing of the Resolution. The Date of Taking shall not be earlier than the date of filing of the Resolution. On the Date of Taking the Subject Property automatically transfers to the Tribe by act of law.
- (b) “Estimated Just Compensation” means the fair market value of the property, as the asset exists at the date of taking, as evidenced by at least one independent appraisal of the property as of the date of taking and other relevant evidence of the property value as of the date of taking.
- (c) “Partial Taking” means the taking of a geographical part of a Respondent’s interest in real property that is contiguous and used as a single parcel.
- (d) “Respondent” entity or person from which a property interest was taken.
- (e) “Subject Property” means the real and/or personal property rights taken, including any permanent structures and appurtenances attached to real property, unless such structures or appurtenances are excepted in the description of the taken Subject Property.
- (f) “Tribe” means, and “Tribal” refers to the Cow Creek Band of Umpqua Tribe of Indians

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*

## **255-30 Eminent Domain**

Pursuant to titles VII and X of the Tribal Constitution, the Tribe, by action of the Cow Creek Tribal Board of Directors may hereby invoke the power of eminent domain exclusively pursuant to the procedure hereby established as Title 255 of the Tribal Code at any time the Tribal Board of Directors determines, in their discretion, that private property is necessary for a tribal public purpose.

**255-40            Procedures for Eminent Domain**

(a) Upon determination that public property is necessary for a tribal public purpose, the Tribal Board of Directors may pass a Resolution with the statements listed herein. Such Resolution shall then be filed with the Clerk of the Tribal Court. The Resolution shall be accompanied by the Estimated Just Compensation in the form of checks, written to all owners of the Subject Property right holders, in the amount of the fair market value of each owner's interest in the property.

(b) The Resolution shall contain the following statements:

- 1) A statement that the Subject Property is within the territorial jurisdiction of the Tribal Court.
- 2) A statement that the Tribal Court shall have original jurisdiction over the subject action, such statement to reference Section 1-20-020 of Title 1 of the Tribal Code.
- 3) A finding that the Subject Property is necessary for a tribal public purpose and the reasons therefore.
- 4) A detailed description of the Subject Property. Such description shall be a surveyed legal description if real property, and may contain exceptions for property rights not taken, such as water rights, grazing rights, or leases. If personal property, such description shall be specific enough to provide the owner of the property with full notice of the taking.
- 5) The term for which the Subject Property is taken, either as a term of years or in perpetuity.
- 6) The Date of Taking.
- 7) A listing of all current holders of property interests in the Subject Property, the nature of their interests, and the Estimated Just Compensation afforded to each.
- 8) Any other statement necessary for the record.

(c) Within 7 calendar days of filing such Resolution, the Clerk of the Tribal Court shall send notice, by certified mail, return receipt requested, to each current holder of interests in the Subject Property of the eminent domain action. Such notice shall include

- 1) A copy of the filed Resolution.
- 2) A copy of this Tribal Code Section 255.
- 3) A cover letter describing the action and containing the name of a point of contact within the Tribe who shall be responsible for prosecuting the taking on behalf of the Tribe.
- 4) The independent appraisal, and any other evidence used to determine Estimated Just Compensation.
- 5) The Notice of Due Date for Answer issued by the Clerk of the Tribal Court.

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*

**255-50            Tribal Court Procedures**

The Tribal Court Procedures for eminent domain actions are as follows:

- (a) Within 2 business days of the filing of a Resolution as described above with the Clerk of the Tribal Court, the Clerk of the Tribal Court shall issue a Notice of Due Date for Answer, such date to be approximately 45 days from the date of filing.
- (b) The Clerk of the Tribal Court shall hold all checks for Estimated Just Compensation in their custody until the Due Date for Answer.
- (c) On the Due Date for Answer, all Respondents may submit an Answer to the Filing raising any legal issues regarding the filing. If any Respondent raises the issue that the taking is invalid, the Clerk of the Tribal Court shall continue to hold the checks. If no Respondent makes such a claim, or when the claim is resolved in favor of the Tribe, the checks shall be issued to the Respondents.
- (d) If the taking is determined to be a valid taking, or if no claim is made that the taking is invalid, the only remaining issue for determination by the Tribal Court is just compensation.
- (e) If the Respondent Answers that the Estimated Just Compensation is inadequate, a Discovery and Hearing schedule shall be established to provide the Respondent with due process for determining just compensation. In no event shall just compensation be determined to be less than Estimated Just Compensation.
- (f) If any Respondent does not submit an Answer, the Tribal Court shall issue an Order that just compensation is equal to the Estimated Just Compensation for that Respondent. If the Respondent does not challenge the Order, with good cause for the late challenge within 30 calendar days, the Tribal Court shall close the file for that action. Any such challenge raising the issue that the taking is invalid shall be rejected if the filing of such challenge is not accompanied by a return of the Estimated Just Compensation, to be held by the Tribal Court until such claim is resolved.

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*

## **255-60 Determining Just Compensation**

- (a) Just Compensation shall be determined as of the Date of Taking.
- (b) Just Compensation shall be determined by the trier of fact by appraisal evidence submitted by the parties to the action, and may be determined by other evidence submitted by the parties, such as testimony of the Respondents. Just Compensation will be based on the highest and best use of the Subject Property on the Date of taking.
- (c) The just compensation for a Partial Taking shall be based on the value of the Subject Property actually taken plus or minus the damages or benefits to the remainder. If the valuation is deemed to be an overall benefit to the remainder, the just compensation shall be the value of the Subject Property actually taken.

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*

**255-70            Effective Date**

This Title 255 shall be effective upon adoption hereof by Resolution approved by no less than eight (8) members of the Tribal Board of Directors by roll call vote.

*Source:* Tribal Board of Directors Resolution No. \_\_\_\_\_ Dated \_\_\_\_\_.

*Comment:*