

**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES
FORT BERTHOLD RESERVATION**

A resolution entitled "Heirship Lands".

WHEREAS, This Nation, having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and,

WHEREAS, Article X of the Constitution of the Three Affiliated Tribes provides that the Secretary of the Interior shall call an election to amend the constitution upon request of two-thirds (2/3) of the vote of the Tribal Council; and,

WHEREAS, Section 206, Indian Land Consolidation Act, 25 U.S.C. 2205(a) provides that ". . . any Indian tribe, subject to the approval by the Secretary of the Interior, may adopt a code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation"; and,

WHEREAS, it has become necessary, in order to exercise the above-described authority provided for in the Indian Land Consolidation Act, to remove an impediment relating to allotted lands in Article VI, Section 5(h) of the Tribal Constitution which grants power to the Tribal Council, as follows:

". . . to regulate the inheritance of real and personal property, other than allotted lands, within the territory of their jurisdiction."

NOW, THEREFORE, BE IT RESOLVED that the Secretary of the Interior be, and is hereby requested to call an election to permit qualified voters to decide whether or not the words "other than" in Article VI, Section 5(h) of the Tribal Constitution of the Three Affiliated Tribes shall be deleted from Article VI, Section 5(h), and the word "including" shall be substituted therefore, so that, if adopted, Article VI, Section 5(h) of the Tribal Constitution will read:

". . . to regulate the inheritance of real and personal property, including allotted lands, within the territory of their jurisdiction."


CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of seven (7) members, of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 9th day of February, 1995; and that Resolution No. 95-57-DSB was duly adopted at said meeting by the affirmative vote of 5 members, 0 members opposed, 2 members abstained, and that said Resolution was passed with the recommendation that it be deferred if there is some conflict with the new federal law.

Dated this 9th day of February, 1995.

Daylon Spotted Bear
Daylon Spotted Bear, Secretary
Tribal Business Council

ATTEST:



Russell D. Mason, Chairman
Tribal Business Council

Attachment To:
R# 95-59-DSB

JAMES P. FITZSIMMONS
Director

Post Office Box 217
New Town, ND 58763

PHONE: 627-4719



December 20, 1989

Ms. Tillie Walker
Mandaree, ND 58757

Dear Tillie:

Based upon my review of the current Constitution of the Three Affiliated Tribes, I would agree with U.S. Field Solicitor Mark A. Anderson, that the Tribe has excluded its own authority over regulating the inheritance of trust lands on the Fort Berthold Indian Reservation by Section 5(h).

Because the express exclusion is contained in the Tribes' Constitution it will, unfortunately, take a Constitution Amendment to correct the problem and thus allow the Tribes to establish Descent and Distribution laws governing allotted trust lands.

Further, the October 8, 1986 heirship laws passed by Alyce's Council and recommended by Acting Superintendent John Danks, are invalid and unenforceable in that they are beyond the present scope of tribal authority akin to ultra vires.

The Constitution can obviously be amended by the people. If that is the approach you wish to take, the language can be changed in a variety of ways. The two simplest would be:

1. Remove the words, other than allotted lands, from Section 5(h), or;
2. Change the words, other than allotted lands to including allotted lands.

Have a nice Christmas!!

Sincerely,

JAMES P. FITZSIMMONS

JPF/skj
Enclosure

EDWARD B. REINHARDT, JR.
Staff Attorney

SHAROL K. JOHNSON
Legal Assistant

VICKIE FOX
Advocate

CLARINE JACKSON
Administrative Aide

SERVING THE COUNTIES
OF:
Mountrail
Dunn
McKenzie
Billings
Golden Valley
and the
Fort Berthold
Indian Reservation



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

—Kuziamr
117
10-16-86

IN REPLY REFER TO:

Tribal Government Services

OCT 15 1986

Memorandum

To: Superintendent, Fort Berthold Agency
From: Tribal Government Services
Subject: Tribal Resolution

We have received Tribal Resolution No. 86-211-C enacted by the Three Affiliated Tribes Business Council.

The resolution has been referred to Tribal Government Services for approval and Realty for comments to Tribal Government Services.

Comments:

Tribal Government Officer

cc: Chairperson, Three Affiliated Tribes
Tribal Government Services
Realty
File

RECEIVED
BUREAU OF INDIAN AFFAIRS

OCT 16 1986

FORT BERTHOLD AGENCY
ABERDEEN, SOUTH DAKOTA

FEB 04 1987

Aberdeen Tribal Government Services

Tribal Inheritance Codes

Deputy to the Assistant Secretary - Indian Affairs
(Trust and Economic Development)
Attn: Division of Real Estate Services
Mail Code 220, Main Interior Building, Mail Stop 4520,
18th & C Streets, N.W., Bureau of Indian Affairs

Attached are copies of Tribal Resolution No. 86-211-C enacted by the Three Affiliated Tribes Business Council October 8, 1986; memorandum of transmittal recommending approval with emphasis of the ten (10) day time frame contained in the tribe's constitution; acknowledgment of that enactment as being referred to Tribal Government Services for approval and Realty for comments to Tribal Government Services; memorandum of approval with routings through Realty and Tribal Government Services in reference to the January 21, 1987, memorandum from Assistant Secretary - Indian Affairs.

Also attached are copies of the Constitution with the most recent amendments.

(Sgd) Jerry L. Jagger
Area Director

Attachments

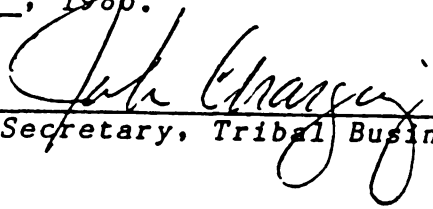
cc: Superintendent, Fort Berthold Agency

RECEIVED
FEB 05 1987
FORT BERTHOLD AGENCY
SIOUX FALLS, S.D.

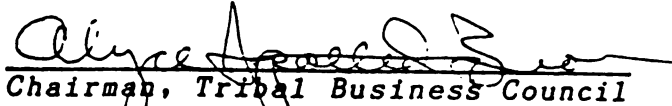
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 8 day of October, 1986; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 8 day of October, 1986.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to protect and preserve the property and natural resources of the Tribes; and
- WHEREAS,** The Three Affiliated Tribes were initially recognized to have retained the inherent sovereign power to regulate the descent and distribution of the lands of their members; and
- WHEREAS,** Such power of the Tribes was, however, subsequently preempted by the General Allotment Act of 1887, 24 Stat. 389, special allotment acts relating to the Fort Berthold Reservation and the Act of February 14, 1923, 25 U.S.C. §335, extending the provisions of the General Allotment Act to lands purchased for and taken in trust for Indians under authority of an act of Congress; and
- WHEREAS,** By the Act of January 12, 1983, 96 Stat. ²⁵¹⁵~~2517~~, as amended by the Act of October 30, 1984, 98 Stat. 3171 and cited as the "Indian Land Consolidation Act," the United States Congress granted the authority to each Indian tribe, acting through its respective governing body and with the approval of the Secretary of the Interior, to adopt its own code of laws to govern descent and distribution of trust or restricted lands within the tribe's reservation or otherwise subject to the tribe's jurisdiction, and may provide that nonmembers of the tribe and non-Indians shall not be entitled to receive by devise or descent any interest or trust or restricted lands within the tribe's reservation or otherwise subject to the tribe's jurisdiction, with certain express provisos or conditions; and ^{section 206}
- WHEREAS,** The Tribal Business Council of the Three Affiliated Tribes has deemed that it would clearly be in the best interests of the Tribes and of their enrolled members to exercise such authority as authorized by the Indian Land Consolidation Act, with the intent and for the purpose of abating and

moderating the progressive loss of trust and restricted lands of the Fort Berthold Reservation set aside by the United States Congress for the benefit of the enrolled members of the Tribes; and

WHEREAS, The Code of Laws of the Three Affiliated Tribes includes certain provisions, entitled "Chapter 14, Heirship and Probate," which govern the descent and distribution of all non-trust and non-restricted real and personal property of the enrolled members of the Tribes and the Tribal Business Council has determined that it would be appropriate to supplement said Chapter 14 of the Code of Laws with the legislative provisions cited hereinbelow and adopted pursuant to the authority granted by the Indian Land Consolidation Act;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes, pursuant to the authority granted by the Indian Land Consolidation Act (25 U.S.C. § 2201 et seq.), hereby formally approves and adopts the following legislative provisions, which provisions shall be designated as Section 13 of Chapter 14 of the Code of Laws of the Three Affiliated Tribes and entitled "DESCENT AND DISTRIBUTION OF ALLOTTED TRUST AND RESTRICTED LANDS:"

No interests in lands situated within the exterior boundaries of the Fort Berthold Indian Reservation and held in trust or in restricted status by the United States for the benefit of enrolled members of the Three Affiliated Tribes shall be subject to devise or descent to nonmembers of the Three Affiliated Tribes or to non-Indians; provided, however, that:

- (a) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of this restriction on eligibility for inheritance and the remainder shall vest in the Indians or Tribal members who would have been heirs in the absence of a qualified person taking a life estate;

- (b) if an intestate Indian decedent has no heir to whom interest in trust or restricted lands may pass, such interests shall escheat to the Three Affiliated Tribes; subject to any non-Indian or nonmember spouse and/or children's rights as described in Paragraph (a) of this Section;
- (c) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such inheritance by reason of this Section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Three Affiliated Tribes acquire such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; provided, however, that any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests. Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.
- (d) The right to receive a life estate under the provisions of this Section shall be limited to the following individuals:
 - (1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest 10 per centum or more of the tract of land; or
 - (2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

BE IT FURTHER RESOLVED, That the above-cited legislative provisions shall become effective immediately.


C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 8 day of October, 1986; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 8 day of October, 1986.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
113 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

*Pub
1-2-87*

IN REPLY REFER TO:

Tribal Government Services

OCT 15 1986

Memorandum

To: Superintendent, Fort Berthold Agency

From: Tribal Government Services

Subject: Tribal Resolution-

We have received Tribal Resolution No. 86-211-C enacted by the Three Affiliated Tribes Business Council.

The resolution has been referred to Tribal Government Services for approval and Realty for comments to Tribal Government Services.

Comments:

(Sgd) *T. H. Moran*

Tribal Government Officer

cc: Chairperson, Three Affiliated Tribes
Tribal Government Services
Realty
File

memorandum

DATE: 10-10-86

REPLY TO
ATTN OF: Fort Berthold AgencySUBJECT: Resolution No. 86-211C - Three Affiliated Tribes
Code of Laws - Enactment of Chapter 13 - Heirship and ProbatePup
10-14-86TO: Aberdeen Area Director
Attn: Tribal Government

This tribal enactment is:

1. Subject to Secretarial Approval

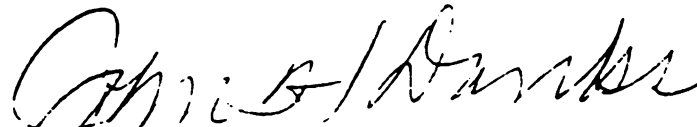
I recommend approval X I do not recommend approval

This enactment was certified by the Three Affiliated Tribes' Tribal Business Council on 10-8-86. I received it on 10-9-86.

Please refer to the Branch of Realty for appropriate action.

By this enactment, the Three Affiliated Tribes' adopt a supplement to Chapter 14 of their Code of Laws. This new section is entitled "Descent and Distribution of Allotted Trust and Restricted Lands" and is in accordance with Sec. 207(c) of the Indian Land Consolidation Act.

Please keep in mind the interpretation of the revised Constitution of the Three Affiliated Tribes requires Secretarial action within 10 days.


 Acting Superintendent

Attachment

OCT 14 1986

Aberdeen Area Office
TRIBAL GOVERNMENT
SERVICESOPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114



76-1776-1001
United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 21 1987

Memorandum

To: All Area Directors

From: Assistant Secretary - Indian Affairs *CA-5*

Subject: Approval of Tribal Inheritance Codes

Pending discussions with the Office of Hearings and Appeals and the development of procedures governing the implementation of Section 206 of the Indian Land Consolidation Act, 96 Stat. 2517, as amended, all inheritance codes which are adopted by tribes pursuant to said Section must be submitted to the Central Office for review prior to approval by Area Directors. Section 206 of the Act provides, in part, as follows:

"Notwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction, and may provide that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction. . . ."

Any tribal inheritance codes which have heretofore been adopted under the Act, and which have been approved by Area Directors, should be submitted immediately to the Division of Real Estate Services, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th & C Sts., N.W., Washington, D.C. 20245.

All submissions should include the comments and recommendations of both the Area Director and the Administrative Law Judge involved in probating estates comprising trust or restricted land within the reservation of the tribe adopting such code.

FEB 2 1987

By: [Signature] Office
1987

Logged
February 4, 1987

BIA.TC.9950

Mr. Jerry Jaeger
Area Director
Aberdeen Area Office
Bureau of Indian Affairs
115 Fourth Avenue Southeast
Aberdeen, South Dakota 57401

*Shirlene,
here a
copy
10/24
02-06-87*

RECEIVED
FEB 6 1987
ABERDEEN AREA OFFICE
BRANCH OF REALTY

Attention: Tribal Government Services

Re: Three Affiliated Tribes' Descent and Distribution of
Allotted Trust and Restricted Lands Ordinance

Dear Mr. Jaeger:

Administrative Law Judge Vernon Rausch recently inquired of this office with respect to resolution No. 86-211-C of the Three Affiliated Tribes. Judge Rausch had received a copy of the Resolution from the Fort Berthold agency and asked whether it had been approved by the Area Director. We advised him to contact your office, and that led to a determination that the Descent and Distribution ordinance had in fact been approved. After receiving the document from Judge Rausch, we reviewed it and became concerned when we noted that the third "whereas" clause of the resolution cited Article VI, Section 5(j) of the tribal Constitution and Section 206 of the Indian Land Consolidation Act, 25 U.S.C. §2205, as authority for the ordinance.

Section 5(j) of Article VI provides the tribal Business Council the power, subject to popular referendum:

To protect and preserve the property, wildlife, and natural resources of the tribes; to regulate hunting and fishing on all lands within the jurisdiction of the tribes; and to cultivate and preserve native arts, crafts, culture, ceremonies and traditions.

On the other hand, Section 5(h) empowers the Council (under the same conditions):

To regulate the inheritance of real and personal property, other than allotted lands, within the territory of their jurisdiction. (Emphasis added)

*Shirlene:
We need to
set up procedure
for handling
these cases (see
cons. act) 20*

It is the exception in Section 5(h) that causes our concern over the validity of the ordinance adopted under Resolution No. 86-211-C. Section 5(j) does not, in light of the specificity of Section 5(h), provide authority for the Business Council to regulate the inheritance of interests in allotted trust and restricted lands. The authority in Section 205 of the Indian Land Consolidation Act, which allows tribes to enact such ordinances subject to Secretarial approval, also does not empower the Tribal Business Council to adopt the ordinance. Section 205 of the federal statute removes federal legal impediments to such ordinances, but it does not remove tribal legal impediments, if any exist. Indeed, Section 212 of the Indian Land Consolidation Act, 25 U.S.C. §2211, recognizes that the federal law does not change fundamental tribal law. It provides:

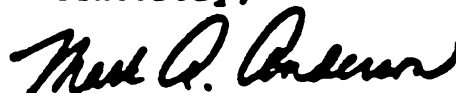
Nothing in this chapter [Indian Land Consolidation] shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and bylaws or other organizational document of such tribe.

In other words, ~~the tribe does not have the authority to~~ regulate the inheritance of allotted lands under the tribal constitution; nothing in the Indian Land Consolidation act gives the tribe that authority. The situation at hand appears to be just that: the Business Council lacks authority over allotted lands by virtue of the express exclusion in Article VI, Section 5(h) and that absence of authority cannot be cured by the Indian Land Consolidation Act.

An argument has been made that the Business Council was in fact exercising (and should have so noted in the resolution) the authority vested in it in Article VI, Section 3, of the constitution. That provision, adopted in a 1985 election, consolidated the powers granted in previous provisions at Article VI, Sections 3(b), 3(c), and 3(d). One might argue that the broad grant of authority in Section 3 provides a sufficient basis for the ordinance, but that would require one to ignore the specific disclaimer of jurisdiction over allotted lands in Section 5(h). It is not clear whether the tribe intentionally or inadvertently left Section 5(h) intact when the Constitution was amended in 1985, but there is no doubt that the provision remains an impediment to tribal authority over allotted lands. (During the 1985 amendment process the tribe did amend Section 5(j) to extend tribal regulatory over all lands within its jurisdiction. This amendment indicates that the tribe was aware of jurisdictional issues and knew how to address them in the constitutional amendment process.)

Inasmuch as these types of ordinances are now to be sent to the Central Office for review, we suggest that you send our views along with this ordinance. ~~Since it is our conclusion that the Business Council was without authority to adopt the ordinance in the first instance, BIA approval could not have enhanced its validity. We are sending Judge Rausch a copy of this opinion for his information.~~

Sincerely,



Mark A. Anderson
For The Field Solicitor

cc:
Judge Rausch

MAA:pjn

memorandum

JAN 22 1985

DATE:

REPLY TO
ATTN OF:

Real Property Management, Acq. & Disp., Aberdeen - Code 306

SUBJECT: Technical Corrections in the Act of January 12, 1983 (Public Law 97-459)

to: Superintendent, Cheyenne River Agency
Superintendent, Crow Creek Agency
Superintendent, Fort Berthold Agency
Superintendent, Fort Totten Agency
Superintendent, Lower Brule Agency
Superintendent, Pine Ridge Agency
Superintendent, Rosebud Agency
Superintendent, Sisseton Agency
Superintendent, Standing Rock Agency
Superintendent, Turtle Mountain Agency
Superintendent, Winnebago Agency
Superintendent, Yankton Agency

Attached is Public Law 98-608, Act of October 30, 1984, (98 Stat. 3171), for your review and to be filed in your Policy Files.


Fred E. Hillis
Area Realty Officer

Attachment

98-608

Ninety-eighth Congress of the United States of America**AT THE SECOND SESSION***Began and held at the City of Washington on Monday, the twenty-third day of January, one thousand nine hundred and eighty-four***Joint Resolution***To make technical corrections in the Act of January 12, 1903 (Public Law 97-459).**Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of January 12, 1903 (96 Stat. 2515; Public Law 97-459), is hereby amended as follows:**(1) At the end of section 204 change the period to a colon and insert the following: "Provided, That—**"(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;**"(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;**"(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;**"(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and**"(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.**"(b) The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan."**(2) Section 205 is amended to read as follows:**Sec. 205. Any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided, That—***"(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preced-*

ing the tribal initiative, may purchase such tract by matching the tribal offer;

"(2) If, at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary;

"(3) all purchases and sales initiated under this section shall be subject to approval by the Secretary."

(3) Section 206 is amended to read as follows:

"Sec. 206. (a) Notwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction, and may provide that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest or trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction: *Provided*, That in the event a tribe takes such action—

"(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;

"(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe, subject to any non-Indian or non-member spouse and/or children's rights as described in paragraph (1) of this section;

"(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: *Provided*, That any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests. Any ineligible devisees shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.

"(b) The right to receive a life estate under the provisions of this section shall be limited to—

"(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land; or

"(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death."

(4) Section 207 is amended to read as follows:

(a) No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than \$100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning \$100 in any one of the five years following the death of the decedent.

(b) Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Notwithstanding the provisions of subsection (a), any Indian tribe may, subject to the approval of the Secretary, adopt its own code of laws to govern the disposition of interests that are escheatable under this section, and such codes or laws shall take precedence over the escheat provisions of subsection (a), provided, the Secretary shall not approve any code or law that fails to accomplish the purpose of preventing further descent or fractionation of such escheatable interests."

(d) At the conclusion of the Act add the following new section:

"Sec. 212. Nothing in this Act shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe."

Sec. 2. The Act of March 29, 1966 (a. 107, 70 Stat. 63; 25 U.S.C. 482a) is amended by inserting immediately after the enacting clause "(a)" and by adding at the conclusion of the Act a new subsection (b) as follows:

(b) In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Began and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

INTERIOR DEPT.

DEC 28 1982

An Act

1:54 PM
LEGISLATIVE COUNSEL

To authorize the purchase, sale, and exchange of lands by Indian tribes and by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation of North Dakota specifically, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Sec. 101. The Congress finds that—

(1) the Devils Lake Sioux Tribe, of the Devils Lake Sioux Reservation, North Dakota, is vigorously pursuing its goal of self-determination through development of manufacturing and farming enterprises; and

(2) the continued existence of the Devils Lake Sioux Reservation, North Dakota, as a permanent homeland of the Devils Lake Sioux Tribe and as a necessary foundation for continued self-determination requires that the Secretary of the Interior have authority to—

(A) consolidate and increase the trust land base in the reservation for the tribe and individual tribal members; and

(B) prevent further loss of trust land.

Sec. 102. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to—

(1) purchase with any funds held by the Secretary in trust for the benefit of the Devils Lake Sioux Tribe or appropriated for the purpose, or acquire by gift, exchange, or relinquishment, any interest in land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation for the benefit of the Devils Lake Sioux Tribe or individual members of such tribe;

(2) sell or approve sales of any interest in tribal trust or tribal restricted land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation but only if additional tribal trust or tribal restricted land which is approximately equal in acreage or value to the interest sold is acquired by the Secretary at the time of such sale; and

(3) exchange any interest in tribal or individual trust land or tribal or individual restricted land (or any improvements thereon) for any land located within the Devils Lake Sioux Reservation but only if the values of the interests in land involved in such an exchange are equal or are equalized by the payment of money.

(b) Any purchase of Federal lands under subsection (a)(1) shall be made in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2744).

Sec. 102. The Secretary shall accept any transfer of title from the Devils Lake Sioux Tribe, or from any individual member of such

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APPROPRIATION OFFICE
DEPARTMENT OF THE INTERIOR

tribe, for any interest in land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation, and shall take title to such property in the name of the United States in trust for the benefit of the Devils Lake Sioux Tribe, or for such individual member.

SEC. 104. Any acquisition, sale, or exchange of lands for the Devils Lake Sioux Tribe which is made under this title shall be made only upon the request of the authorized governing body of the Devils Lake Sioux Tribe, subject to the limitations and procedures of the tribal constitution.

SEC. 105. Notwithstanding any other provision of applicable law, the title to any interest in land, or any improvements thereon, acquired by the Secretary under this title shall be acquired in the name of the United States in trust for the benefit of the Devils Lake Sioux Tribe or an individual member of such tribe, as the case may be, and such property shall be held and treated in the same manner as other trust or restricted Indian lands are held and treated under Federal law.

SEC. 106. Money or amounts credited to the Devils Lake Sioux Tribe from the sale or exchange under this title of any interest in trust or restricted land (or any improvements thereon) may be used only for the purpose of purchasing or acquiring property under this title and shall be deposited in a special account under the control of the Secretary or his duly authorized representative.

SEC. 107. Subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended, is further amended—

(1) by striking out "and leases of land on the Agua Caliente" in the second sentence and inserting in lieu thereof "leases of land on the Agua Caliente", and

(2) by striking out "and the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington," in the second sentence and inserting in lieu thereof the following: "leases of the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation."

SEC. 108. (a)(1) The devise or descent of any interest in trust or restricted land located within the Devils Lake Sioux Reservation to any person who is not a member of the Devils Lake Sioux Tribe shall be subject to the right of such tribe to purchase such interest within two years of the date of death of the decedent by paying to the Secretary for the benefit of such person an amount equal to the fair market value of such interest on the date of such purchase (as determined by the Secretary after appraisal).

(2) Within ninety days after the date on which the Secretary receives payment of an amount for the benefit of a person under paragraph (1), the Secretary shall pay such amount to such person.

(3) The Devils Lake Sioux Tribe may exercise its right under paragraph (1) to purchase the interest of a person only if the governing body of such tribe notifies such person and the Secretary of the intent of such tribe to purchase such interest at least ninety days prior to the date of such purchase.

(b)(1) Subsection (a) shall not apply to any interest in land acquired by the spouse of a decedent if—

(A) the spouse elects the application of this subsection prior to the date which is ninety days after the date on which the

governing body of the Devils Lake Sioux Tribe notifies the spouse of its intent to acquire such interest, and

(B) prior to such date, the spouse retains a life estate in such interest and conveys the remainder of such interest to any heir of the decedent who is a member of such tribe.

(2) If the spouse of a decedent elects the application of this subsection with respect to any interest in land which was trust or restricted land immediately prior to the death of the decedent, the life estate and the remainder of such interest created by the conveyance described in paragraph (1)(B) shall acquire such trust or restricted status.

(c) This section shall only apply to interests included in the estates of decedents dying on or after the date of enactment of this title.

Sec. 109. The Devils Lake Sioux Reservation, North Dakota, is hereby declared the permanent homeland of the Devils Lake Sioux Tribe.

Sec. 110. The Secretary is authorized to take such action as may be necessary to carry out the purposes of this title.

TITLE II

Sec. 201. This title may be cited as the "Indian Land Consolidation Act".

Sec. 202. For the purpose of this title—

(1) "tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;

(2) "Indian" means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior;

(3) "Secretary" means the Secretary of the Interior; and

(4) "trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation.

Sec. 203. The provisions of section 5 of the Act of June 18, 1934 (48 Stat. 965), shall apply to all tribes notwithstanding the provisions of section 18 of such Act: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or states).

Sec. 204. (a) Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal land-holdings. *PROVIDED, That*

Sec. 205. Any Indian tribe may purchase at no less than the fair market value all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise, *subjected* to that tribe's jurisdiction with the consent of *over 50 per centum* of the owners or with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided*, That—

(1) no such tract shall be acquired by any Indian or Indian tribe over the objection of three or less owners owning 50 per centum or more of the total interests in such tract;

INSERT FROM 206 amended by 98 STAT 3171 making technical connections to Act.

amended by 98 Stat 3171

(2) any Indian owning any undivided interest in, and in actual use and possession of such tract, may purchase such tract by matching the tribal offer;

(3) this section shall not apply to any tract of land owned by less than fifteen persons; and

(4) all purchases and sales initiated under this section shall be approved by the Secretary.

Sec. 206. Notwithstanding any other provisions of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest of a member of such tribe in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction. *Provided*, That in the event a tribe takes such action—

move to 204

(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.—

(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children shall be entitled to a life estate in as much of the trust or restricted lands as he, she or they would have been entitled to take under existing law;

(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe, subject to any non-Indian or non-member spouse and/or children's rights as described in paragraph (1) of this section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the

Commentary
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devises, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: Provided, That any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests, or be compensated by the tribe for the value of such interests.

Escheat
SEC. 207. No undivided fractional interest in any tract of trust or restricted land within a tribe's reservation or otherwise subjected to a tribe's jurisdiction shall ~~descend~~ *descend* by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and has earned to its owner less than \$100 in the preceding year before it is due to escheat.

SEC. 208. The Secretary in carrying out his responsibility to regulate the descent and distribution of trust lands under section 1 of the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372) as amended, and other laws, shall give full faith and credit to any tribal actions taken pursuant to section 206 of this title which provision shall apply only to estates of decedents whose deaths occur on or after the effective date of tribal ordinances adopted pursuant to this title.

SEC. 209. The Secretary shall have the authority to issue deeds, patents, or such other instruments of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to the terms of this title and to remove, at the request of an Indian owner, the trust status of individually held lands or interests therein, where authorized by law.

SEC. 210. Title to any land acquired under this title by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe.

SEC. 211. All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this title shall be exempt from Federal, State and local taxation.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate*

Act of January 12, 1983, P.L. 97-459,
(96 Stat. 2515) as amended by the Act
of October 30, 1984, P.L. 98-608;
(98 Stat. 3171)

TITLE II

Indian Land Consolidation Act

Sec. 201. This title may be cited as the "Indian Land Consolidation Act".

Sec. 202. For the purpose of this title---

- (1) "Tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;
- (2) "Indian" means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior;
- (3) "Secretary" means the Secretary of the Interior"; and
- (4) "Trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation.

Sec. 203. The provisions of Section 5 of the Act of June 18, 1934 (48 Stat. 985) shall apply to all tribes notwithstanding the provisions of Section 18 of such Act; *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

Sec. 204. (a) Notwithstanding any other provisions of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal land holdings; *Provided*, That---

- (1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lessor value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanges lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

Sec. 205. Any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided, That---*

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if, at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary;

(3) all purchases and sales initiated under this section shall be subject to approval by the Secretary.

Sec. 206. (a) Notwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction, and

may provide that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest or trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction: *Provided*, That in the event a tribe takes such action---

(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;

(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe, subject to any non-Indian or nonmember spouse and/or children's rights as described in paragraph (1) of this section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: *Provided*, that any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests, may retain, at their option, a life estate in such interests.

Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.

(b) The right to receive a life estate under the provisions of this section shall be limited to---

(1) a spouse and/or children who, if they had been eligible would have inherited an ownership interest of 10 per centum or more in a tract of land; or

(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

Sec. 207. (a) No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than \$100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning \$100 in any one of the five years following the death of the decedent.

(b) Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Notwithstanding the provisions of subsection (a), any Indian tribe may, subject to the approval of the Secretary, adopt its own code of laws to govern the disposition of interests that are escheatable under this section, and such codes or laws shall take precedence of the escheat provisions of subsection (a), provided, the Secretary shall not approve any code or law that fails to accomplish the purpose of preventing further descent or fractionation of such escheatable interests.

Sec. 208. The Secretary in carrying out his responsibility to regulate the descent and distribution of trust lands under Section 1 of the Act of June 25, 1910 (36 Stat. 855: 25 U.S.C. 372) as amended, and other laws, shall give full faith and credit to any tribal actions taken pursuant to Section 206 of this title, which provision shall apply only to estates of decedents whose deaths occur on or after the effective date of tribal ordinances adopted pursuant to this title.

Sec. 209. The Secretary shall have the authority to issue deeds, patents, or such other instruments of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to the terms of this title and to remove, at the request of an Indian owner, the trust status of individually held lands or interests therein, where authorized by law.

Sec. 210. Title to any land acquired under this title by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe.

Sec. 211. All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this title shall be exempt from Federal, State and local taxation.

Sec. 212. Nothing in this Act shall be construed as vesting the governing body of any Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Program
UNITED STATES GOVERNMENT
memorandum

a 21
01-09-87

DATE: JAN 07 1987
REPLY TO ATTN OF: Aberdeen Tribal Government Services
SUBJECT: Resolution No. 86-211-C
TO: Superintendent, Fort Berthold Agency

Resolution No. 86-211-C enacted October 8, 1986, and received in this office October 4, 1986, was referred to Realty for comments with approval action in Tribal Government Services. No comments were received as a basis for any disapproval action. Resolution No. 86-211-C providing Section 13 of Chapter 14 titled "Descent and Distribution of Allotted Trust and Restricted Lands" is therefore approved as of the date of enactment.

James J. Jaeger
Area Director

*all right to
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tribe
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not
approved
by
the
tribe*

cc: Chairperson, Three Affiliated Tribes

Copy to Realty + Programs 1/8/87

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BUREAU OF ADMINISTRATION
JAN 08 1987
FORT BERTHOLD AGENCY
NEWTON, N. DAKOTA

RECEIVED
JAN 13 1987
BUREAU OF TRUST SERVICES

no file

memorandum

DATE: 10-10-86

REPLY TO
ATTN OF: Fort Berthold Agency

SUBJECT: Resolution No. 86-211C - Three Affiliated Tribes
Code of Laws - Enactment of Chapter 13 - Heirship and Probate

*Recd
10-14-86*

TO: Aberdeen Area Director
Attn: Tribal Government

This tribal enactment is:

1. Subject to Secretarial Approval

I recommend approval X

I do not recommend approval

This enactment was certified by the Three Affiliated Tribes' Tribal Business Council on 10-8-86. I received it on 10-9-86.

Please refer to the Branch of Realty for appropriate action.

By this enactment, the Three Affiliated Tribes' adopt a supplement to Chapter 14 of their Code of Laws. This new section is entitled "Descent and Distribution of Allotted Trust and Restricted Lands" and is in accordance with Sec. 207(c) of the Indian Land Consolidation Act.

Please keep in mind the interpretation of the revised Constitution of the Three Affiliated Tribes requires Secretarial action within 10 days.

[Handwritten Signature]
Acting Superintendent

Attachment

OCT 14 1986
Aberdeen Area Office
TRIBAL GOVERNMENT
SERVICES

RECEIVED
FEBRUARY 12 1984

1986

Resolution #86-all-c

FORT BERTHOLD AGENCY

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to protect and preserve the property and natural resources of the Tribes; and
- WHEREAS, The Three Affiliated Tribes were initially recognized to have retained the inherent sovereign power to regulate the descent and distribution of the lands of their members; and
- WHEREAS, Such power of the Tribes was, however, subsequently preempted by the General Allotment Act of 1887, 24 Stat. 389, special allotment acts relating to the Fort Berthold Reservation and the Act of February 14, 1923, 25 U.S.C. §335, extending the provisions of the General Allotment Act to lands purchased for and taken in trust for Indians under authority of an act of Congress; and
- WHEREAS, By the Act of January 12, 1983, 96 Stat. 2517, as amended by the Act of October 30, 1984, 98 Stat. 3171 and cited as the "Indian Land Consolidation Act," the United States Congress granted the authority to each Indian tribe, acting through its respective governing body and with the approval of the Secretary of the Interior, to adopt its own code of laws to govern descent and distribution of trust or restricted lands within the tribe's reservation or otherwise subject to the tribe's jurisdiction, and may provide that nonmembers of the tribe and non-Indians shall not be entitled to receive by devise or descent any interest or trust or restricted lands within the tribe's reservation or otherwise subject to the tribe's jurisdiction, with certain express provisos or conditions; and
- WHEREAS, The Tribal Business Council of the Three Affiliated Tribes has deemed that it would clearly be in the best interests of the Tribes and of their enrolled members to exercise such authority as authorized by the Indian Land Consolidation Act, with the intent and for the purpose of abating and

moderating the progressive loss of trust and restricted lands of the Fort Berthold Reservation set aside by the United States Congress for the benefit of the enrolled members of the Tribes; and

WHEREAS, The Code of Laws of the Three Affiliated Tribes includes certain provisions, entitled "Chapter 14, Heirship and Probate," which govern the descent and distribution of all non-trust and non-restricted real and personal property of the enrolled members of the Tribes and the Tribal Business Council has determined that it would be appropriate to supplement said Chapter 14 of the Code of Laws with the legislative provisions cited hereinbelow and adopted pursuant to the authority granted by the Indian Land Consolidation Act;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes, pursuant to the authority granted by the Indian Land Consolidation Act (25 U.S.C. § 2201 et seq.), hereby formally approves and adopts the following legislative provisions, which provisions shall be designated as Section 13 of Chapter 14 of the Code of Laws of the Three Affiliated Tribes and entitled "DESCENT AND DISTRIBUTION OF ALLOTTED TRUST AND RESTRICTED LANDS:"

No interests in lands situated within the exterior boundaries of the Fort Berthold Indian Reservation and held in trust or in restricted status by the United States for the benefit of enrolled members of the Three Affiliated Tribes shall be subject to devise or descent to nonmembers of the Three Affiliated Tribes or to non-Indians; provided, however, that:

- (a) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of this restriction on eligibility for inheritance and the remainder shall vest in the Indians or Tribal members who would have been heirs in the absence of a qualified person taking a life estate;

- (b) if an intestate Indian decedent has no heir to whom interest in trust or restricted lands may pass, such interests shall escheat to the Three Affiliated Tribes; subject to any non-Indian or nonmember spouse and/or children's rights as described in Paragraph (a) of this Section;
- (c) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such inheritance by reason of this Section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Three Affiliated Tribes acquire such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; provided, however, that any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests. Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.
- (d) The right to receive a life estate under the provisions of this Section shall be limited to the following individuals:
 - (1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest 10 per centum or more of the tract of land; or
 - (2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

BE IT FURTHER RESOLVED, That the above-cited legislative provisions shall become effective immediately.