



RESIGHINI RANCHERIA

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RESOLUTION OF THE RESIGHINI RANCHERIA COUNCIL

RESOLUTION NO: 2003-26

DATE APPROVED: June 25, 2003

SUBJECT: ADOPTING RULES FOR HEARINGS BEFORE THE TRIBAL COUNCIL

Whereas: the Resighini Rancheria is a federally recognized tribal government formally constituted and established pursuant to the Indian Reorganization Act of 1934; and

Whereas: the Resighini Rancheria Tribal Council (hereinafter "Tribal Council") is the governing body of the Resighini Rancheria under the authority of the Constitution of the Resighini Rancheria; and

Whereas: Article V, Section 3, items (g), (h), and (j), of the Resighini Rancheria Constitution provide that the Tribal Council has the specific powers: to manage, develop, protect and regulate the use of tribal property, wildlife, water, minerals, and all other natural resources within Tribal jurisdiction; to the full extent authorized by applicable federal and tribal law, to enact laws and codes governing conduct of individuals and prescribing disciplinary action for offenses against the Tribe; to maintain order; to protect the safety and welfare of all persons within Tribal jurisdiction; and to provide for the enforcement of the laws and codes of the Tribe; and to take all actions which are necessary and proper for the exercise of the powers delegated to the Tribal Council or to any person or committee under the supervision of the Tribal Council; and

Whereas: The Tribal Council has adopted ordinances that provide for hearings before the Tribal Council, but do not establish rules governing such hearings,

Now Therefore be it Resolved that the Tribal Council hereby adopts the attached Rules for Hearings Before the Tribal Council.

BE IT FURTHER RESOLVES that such rules shall govern all hearings before the Tribal Council except as otherwise expressly provided in tribal law.



CERTIFICATION

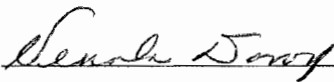
As President and/or Vice-President of the Tribal Council of the Resighini Rancheria, I do hereby certify that a meeting duly called, notice and convened on the 25th day of June, 2003 were a quorum was present, the Tribal Council adopted Resolution #2003-26 by a vote of 5 FOR 0 AGAINST 0 ABSTAIN and said Resolution has not been rescinded or amended in any way.

Dated:



(PRESIDENT AND/OR VICE PRESIDENT)

ATTEST:



ORIGINALLY ADOPTED: June 25, 2003
DATE AMENDED: N/A
SUBJECT: Judicial, Tribal Council Hearing Rules
ADOPTING RESOLUTION NUMBER(S): 2003-26

RESIGHINI RANCHERIA

RULES FOR HEARINGS BEFORE THE TRIBAL COUNCIL

Section 1 – Short Title, Findings and Purpose

- 1.1 Short Title: This Ordinance shall be known as the RULES FOR HEARINGS BEFORE THE TRIBAL COUNCIL.
- 1.2 Findings:
 - (A) The Resighini Rancheria is a federally recognized tribal government formally constituted and established pursuant to the Indian Reorganization Act of 1934, and operating under a Constitution that establishes the Business Council, also known as the Tribal Council, as the Tribe’s governing body. (Herein “Tribal Council”.)
 - (B) As the governing body of the Resighini Rancheria, the Tribal Council possesses full authority of a sovereign government, including the authority to exercise legislative, executive and judicial authority, with Article III, section 1 of the Resighini Rancheria Constitution and By-laws expressly providing that the Tribal Council is authorized to “determine its own procedures and shall be authorized to act, except as otherwise provided in this constitution”
 - (C) The Tribal Council is called upon to exercise judicial authority from time to time and has determined rules are appropriate to give formal support, structure and enforcement to tradition based methods of resolving disputes without the imposition of unduly formalistic systems and judges and lawyers.
- 1.3 Purpose: The purpose of this Ordinance is to implement the purposes of the Constitution and Tribal law by promoting uniformity in practice and procedure, by providing guidance to those involved in disputes, and by providing an expedited process for the full and final resolution of disputes by the Tribal Council. Unless a specific hearing procedure is set forth in a tribal ordinance, these rules apply to every action and proceeding within the jurisdiction of the Resighini Rancheria submitted to the Tribal Council for adjudication. While

intended to avoid unduly formalistic systems, in the interest of promoting final resolution of disputes, procedural requirements will be strictly interpreted and applied. Failure to comply may be grounds for dismissal with prejudice.

Section 2 - PRE-HEARING PROCEDURES.

2.1 Request for Hearing.

2.1.1. Any and all requests for a hearing must be made in writing and must be received at the Tribal office within the time frame specified in provisions of tribal law applicable to or governing the request, petition or appeal at issue, or in the event tribal law does not specify a time frame, within sixty (60) days from the date of the action or decision complained of.

2.1.2. Mandatory Hearing. Any and all requests for a hearing where tribal law provides a right to a hearing before the Tribal Council shall contain the following:

- (a) The name and address of the person requesting the hearing (hereinafter generally referred to as "appellant");
- (b) A brief statement of identifying the decision or issue(s) being disputed;
- (c) The particular grounds of the contest;
- (d) A list of any parties the appellant believes have an interest in the contest, together with a brief statement of each party's interest, his or her name, address and telephone number;
- (e) Citation to the provision of the Tribal law establishing a right to a hearing and a statement that the appellant requests a hearing.
- (f) A clear title with the words "Request for a Hearing."

2.1.3 Optional Hearings. Any and all requests for a hearing where the Tribal law does not establish a right to a hearing but allows for an optional hearing shall contain the following:

- (a) The appellant's name and address;
- (b) A brief statement of identifying the decision or issue(s) being disputed;
- (c) The particular grounds of the contest;
- (d) A declaration or other evidence setting forth a prima facie factual basis for the contest. Mere hearsay evidence shall *not* be sufficient to warrant a hearing.
- (e) A request for a hearing and a clear title with the words "Request for a Hearing."

2.2 Tribal Council Action on Hearing Request

2.2.1. Mandatory Hearings.

2.2.1.1 A request for hearing shall be denied in any of the following circumstances:

- (a) The request is untimely.
- (b) The request does not comply with requirements of section 2.1.2 above.
- (c) The contest does not state a claim for which the requested relief may be granted.

2.2.1.2 Upon receipt of a request of a hearing, the Tribal Council shall immediately cause a hearing to be scheduled in compliance with the time frame established by the Tribal law, or in the event tribal law does not specify a time frame, within sixty (60) days from the date of receipt of the request for a hearing.

2.2.1.3 The Tribal Council shall cause notice of the hearing date, time and location to be served on the appellant and on all interested parties. "Interested party" includes parties with a direct and substantial interest in the outcome of the proceeding. Notice shall be deemed given when:

- (a) personally served on the party;
- (b) deposited in the U.S. mail and accompanied by a telephonic communication with the party advising them of the hearing date; or
- (c) deposited in the U.S. mail and accompanied by delivery of a copy of the notice to the party's residence or place of employment. .

2.2.1.4 The Tribal Council shall cause a complete copy of the request for hearing and all accompanying documents to be open for inspection by any interested party.

2.2.2 Optional Hearings.

2.2.2.1 A request for hearing shall be denied in any of the following circumstances:

- (a) The request is untimely.
- (b) The request does not comply with requirements of section 2.1.3 above.
- (c) The contest does not state a claim for which the requested relief may be granted.

2.2.2.2 The request for hearing *may* be granted at the Tribal Council's pleasure if a prima facie showing has been made and the Council determines that additional evidence or argument would aid in the just determination of the claim. If a hearing is granted, the Tribal Council shall immediately cause a hearing to be scheduled in compliance with the time frame established by the Tribal law or in the event tribal law does not specify a time frame, within sixty (60) days from the date of receipt of the request for a hearing..

2.2.2.3 Notice of any hearing shall be provided in accordance with the requirements of section 2.2.1.3 above.

2.3 Pre-hearing Investigation and Report

2.3.1 When an issue is submitted to the Tribal Council for adjudication and there are no identified parties to the proceeding other than the appellant, or as otherwise deemed warranted by the Tribal Council, the Tribal Council may designate a presenting officer (“PO”) who shall be charged with the following responsibilities:

2.3.1.1 The PO shall conduct a pre-hearing investigation by compiling relevant documentary evidence and interviewing parties to determine whether a conciliation agreement can be reached.

2.3.1.2 The parties shall provide copies of all relevant documentary evidence to the PO. Documents not so provided shall be excluded from evidence except upon a showing of good cause for failure to disclose the document in the pre-hearing investigation.

2.3.1.3 Within twenty (20) days of recipient of the hearing request, and as needed thereafter, the PO shall provide the complaining party a written report of the results of the investigation and a copy of these rules. This time period may be adjusted upon mutual written agreement of the parties. The report shall include a clear explanation of the PO’s preliminary findings and recommendations, and the parties’ right to a hearing before the Tribal Council. The report shall be entered into evidence at any subsequent hearing.

2.3.1.4 The PO may be a member of the Tribal Council, provided that a Council member who is designated as the PO in a case, shall recuse him or herself from participation in adjudicatory deliberations of the Tribal Council.

2.4 Status Conference. As soon as possible after a hearing has been set, a status conference may be held to discuss necessary documents, and to

discuss the number and availability of witnesses. This may be done by conference call.

2.5 Witnesses.

2.5.1 Not less than 72 hours prior to the hearing, each party shall submit in writing to the Tribal Council a list of witnesses each intends to call, and shall request issuance of subpoenas for any witnesses that must be subpoenaed. The Tribal Council Secretary shall then issue subpoenas to the requesting party, who shall be responsible for serving the subpoena. Subpoenas shall be issued only for persons who reside or perform work on the Reservation.

2.5.2 Written statements of witnesses may be admitted into evidence when signed under penalty of perjury, provided no party objects to admission of the statement in lieu of live testimony.

2.5.3 The Tribal Council may impose fines on witnesses who, without good cause, fail to appear after having been served with a subpoena within a reasonable period of time prior to the date of the hearing.

Section 3 - CONDUCT OF THE HEARING

3.1 Hearing Officer. The Tribal Council shall designate a hearing officer to preside over the hearing. The hearing officer may be a member of the Tribal Council, the Tribe's legal counsel or an individual with no interest in the proceeding. He/she shall take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties shall abide by the Hearing Officer's rulings. The Hearing Officer has the authority, among others, to:

- (a) Administer oaths or affirmations;
- (b) Regulate the course of the hearing;
- (c) Rule on offers of proof and the admissibility of documents;
- (d) Limit the number of witnesses when testimony would be unduly repetitious; and
- (e) Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.

3.2 Parties and Spokespersons.

3.2.1 All parties are entitled to be present for the entire hearing. In addition to having a spokesperson, any party which is an entity, such as the Tribal Council, may be present through a person it may designate.

- 3.2.2 Each party is entitled to be represented by a spokesperson of their own choosing and at their own expense.
- 3.3 Transcript of Hearings. Upon request of the parties, hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of transcripts to be borne by the requesting party(ies). The request shall include a deposit of the approximate cost of the transcript either (1) pursuant to estimate provided by the Tribal Council Secretary or (2) computed at \$325.00 per fraction of a day's proceedings that the party states did not exceed three hours. Fees for transcripts prepared from recordings by Tribal Council employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent. If the reporting is done pursuant to a contract between the reporter and the Tribal Council, fees for transcripts will be at rates established by the contract.
- 3.4 Evidence Standards. Parties may object to the form of a question (e.g. leading question or compound question) or irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Hearing Officer shall exclude any testimony or documents that he/she deems clearly irrelevant in order to keep control of the hearing. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in court civil cases.
- 3.5 Audience. All hearings before the Board shall be held in executive session unless all parties and the Tribal Council agree to opening the proceeding to the public.
- 3.6 Burden of Proof. The burden of proof shall be apportioned as provided in tribal law, and in the absence thereof, the appellant, that is, the person(s) requesting the hearing shall have the burden of proof and shall present his or her case first.
- 3.7 Order of Hearing.
- 3.7.1 Opening Statements. The parties shall be afforded the opportunity to present opening statements to explain what they intend to prove during the hearing. The responding party may make their opening statement either immediately after the other party's opening statement or immediately before their own presentation of evidence.
- 3.7.2 Presentation of Evidence. The parties may present evidence through the introduction of documents and/or the testimony of witnesses. Both parties may examine their own witnesses and cross-examine the witnesses of the other party. However, no harassment or efforts to intimidate witnesses will be permitted. The Council members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.

3.7.3 Closing Statements. The parties shall be afforded the opportunity to present closing statements to explain how the evidence supports what they intended to prove.

3.8 A default judgment may be entered against any party who fails to appear at a duly noticed hearing. The judgment may be entered with prejudice and may only be set aside upon a showing of extraordinary circumstances.

Section 4 - THE DECISION.

4.1 The decision shall be in writing and personally delivered or served by mail by tribal staff on the parties in accordance with time frames established in Tribal law or in the absence of specific applicable time frames, within thirty days of the date of the decision.

4.2 Except when tribal law expressly provides for appeal to the General Council, decisions of the Tribal Council in any matter subject to Council hearing are FINAL.

4.3 No appeal may be taken from a final decision of the Tribal Council. Notwithstanding, any party may make a request to the Tribal Council for reconsideration of its decision. Such request for reconsideration shall clearly state the grounds why the Council should reconsider its decision. The request for reconsideration shall not be based on new evidence that was reasonably available at the time of the hearing. Any request for reconsideration shall be filed with the Council within fifteen (15) days of the date the decision is served. A copy of the request for reconsideration shall be served on all parties and proof of service filed with the Council along with the request for reconsideration. The other party shall file any opposition to the request within fifteen (15) days of the date the request was served and shall serve any opposition papers on all parties, filing proof of service with the Council. The Tribal Council may convene a hearing or may rule on the pleadings and shall issue its ruling on the request within forty-five days (45) days from the date the request was filed, or from the date of any hearing on the request. The request for reconsideration is final and shall not be subject to further review or consideration.

CERTIFICATION

I, the undersigned, as Chairperson of the Resighini Rancheria Tribal Council, do hereby certify that the foregoing Rules For Hearings Before the Tribal Council were adopted by a vote of 5 for , 0 against and 0 abstain, by the Resighini Rancheria Tribal

Council composed of five (5) members of which a quorum was present at a special meeting thereof duly and regularly called, noticed, convened, and held on the 25th day of June, 2003.

DATED: _____
Rick Dowd, Chairperson

ATTEST:

Secretary, Resighini Rancheria