

SHOALWATER BAY INDIAN TRIBE CODE OF LAWS



Title 21 Rules of Criminal Procedure

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**TITLE 21
RULES OF CRIMINAL PROCEDURE**

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TITLE 21 RULES OF CRIMINAL PROCEDURE

Chapter 21.01 General Provisions

21.01.01 Title

This Title shall be known and may be cited as the Shoalwater Bay **Rules of Criminal Procedure** Code.

21.01.02 Purpose

The purpose of this title is to provide rules of procedure to govern the prosecution of offenses in Tribal Court, to support and expedite the truth-finding mission at trial and to guarantee defendants those rights deemed essential to an accurate determination of guilt. These rules shall be construed to secure simplicity in procedure, fairness in judicial administration, and the elimination of unjustifiable expense and delay. The rules are to be in keeping with the spirit and plain meaning of the Tribal **Constitution** of the Shoalwater Bay Indian Tribe.

21.01.03 Severability

The provisions of this title are severable. A judicial declaration of invalidity regarding any portion or application of this title does not affect the remaining parts of this title.

21.01.04 Jurisdiction

The Shoalwater Bay Tribal Court shall have jurisdiction over cases arising under this Tribal Code. The jurisdiction of the Tribal Court over persons and territory is limited only by the **Constitution** of the Shoalwater Bay Indian Tribe. The Tribal Court shall have the power to decide questions of jurisdiction, which may be raised under this title.

21.01.05 Exhaustion of Tribal Remedies

Any person charged with an offense for which he or she may be prosecuted under the laws of the Shoalwater Bay Indian Tribe and those of another jurisdiction may be prosecuted under applicable law in the Tribal Court whether or not the other jurisdiction prosecutes the person. All Tribal remedies must be exhausted first.

21.01.06 Definitions

- (a) "*Arraignment*" – a hearing, at which the accused is brought before the Tribal Court, informed of the charge and his or her civil rights, given an opportunity to enter a plea, and where bail is set.
- (b) "*Arrest*" – the taking of a person into police custody and possibly held to answer for a criminal offense.
- (c) "*Complaint*" – a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense at a particular time and location.
- (d) "*Controlled Substance*" – a drug or substance that has a stimulant or depressant effect on the central nervous system, or is a hallucinogenic substance, and which commonly becomes addictive after prolonged use. Examples of controlled substances include acid, cocaine, heroin, marijuana, mescaline, opium, and LSD, but also includes inhalants such as Pam™, glue, and Sterno™. Peyote and other such drugs are not considered controlled substances under this Title when used in connection with traditional Native American religious ceremonies.
- (e) "*Criminal Complaint*" – a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense at a particular time and location.
- (f) "*Home Detention*" – a program of confinement and supervision that restricts the defendant to his or her place of residence permanently or during specified hours, and enforced by appropriate means of surveillance.
- (g) "*Probable Cause*" – when an apparent set of facts are found to exist which would cause a reasonable person to believe that the accused person committed a particular offense or that evidence of a crime would be found on the premises or person to be searched.
- (h) "*Search Warrant*" – a written order signed by the Tribal Chief Judge or Tribal Judicial Officer, and directed to a Tribal Law Enforcement Officer ordering the officer to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched, shall describe the items to be seized, and it shall specify the time the warrant is in effect.

21.01.07 Assistance from Tribal, State, and Federal Agencies

The Tribal Court may seek assistance from employees of the **Bureau of Indian Affairs, State Department of Social and Health Services**, and any other Tribal, State, or Federal Agency necessary in the presentation of facts in a case and the determination of proper treatment of individual offenders.

CHAPTER 21.02 STARTING THE CRIMINAL PROCESS

21.02.01 Complaint

- (a) Defined. All criminal prosecutions for violation of this title shall be initiated by Complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense at a particular time and location.
- (b) Complaints shall contain:
 - 1) The signature of the complaining witness or Prosecutor sworn to before the Tribal Chief Judge or an individual designated by the Tribal Chief Judge; and
 - 2) A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and
 - 3) The name or description of the person alleged to have committed the offense; and
 - 4) The section of the Tribal Code allegedly violated.
- (c) The Tribal Court Clerk shall be available to assist persons in drawing up complaints and screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to the Tribal Chief Judge or Tribal Judicial Officer to determine whether a Warrant or Summons should be issued.
- (d) If the complaint, together with other written sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Tribal Court shall issue a warrant pursuant to this title, instructing Tribal Law Enforcement Officers, or other tribally authorized law enforcement officers, to arrest the named accused or, in lieu thereof, the Tribal Court shall issue a Summons commanding the accused to appear before the Tribal Court at a specified time and place to answer to the charge.
- (e) When an accused has been arrested without a warrant, a complaint shall be filed immediately with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.
- (f) When an accused is charged with several violations of this Code, a separate complaint shall be made and filed for each violation.

21.02.02 Arrest

- (a) Defined. Arrest is the taking of a person into police custody to answer for a criminal offense.

- (b) No Tribal Law Enforcement Officer shall arrest a person for a criminal offense defined by the Tribal **Law and Order Code** or by other applicable law or custom except when:
- 1) The officer has a warrant or a copy of an existing Tribal Court warrant commanding the arrest of such person; or
 - 2) The offense occurred in the presence of the arresting officer; or
 - 3) The officer has probable cause to believe that the person committed an offense; or
 - 4) In the case of extradition, pursuant to **Chapter 21.10** of this title.

21.02.03 Arrest Warrants

- (a) The Tribal Chief Judge or Tribal Judicial Officer of the Tribal Court shall have authority to issue warrants to arrest. Arrest warrants shall only be issued if the Tribal Court finds there is probable cause to believe:
- 1) That an offense has been committed; and
 - 2) That the person to be arrested committed the offense; and
 - 3) That both elements 1) and 2) above are supported by substantial evidence.
- (b) The arrest warrant shall contain the following information:
- 1) Name and address, if known, of the person to be arrested. If the name is unknown, then a description of the person to be arrested. This is often referred to as a "John Doe" warrant; and
 - 2) Date of issuance of the warrant; and
 - 3) Description of the offense charged or the reason that the warrant is issued; and
 - 4) Signature of the issuing Tribal Chief Judge or Tribal Judicial Officer.

21.02.04 Notification of Rights at Time of Arrest

Upon arrest, the accused shall be advised of the following:

- (a) That the suspect has the right to remain silent; and
- (b) That any statements made by the accused may be used against the accused in Tribal Court; and
- (c) That the accused has the right to obtain counsel at the accused's own expense; and
- (d) The nature of the complaint against the accused.

If arrested pursuant to a warrant, the accused shall receive a copy of the warrant at the time of the arrest or as soon after as is possible.

21.02.05 Summons is Lieu of Warrant

- (a) When otherwise authorized to arrest a suspect, a Tribal Judge, or Judicial Officer may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.
- (b) The summons shall contain the same information as a warrant, except that, it may be signed by the Tribal Court Clerk.
- (c) If an accused fails to appear in response to a summons, a warrant for the arrest of the accused shall be issued.

21.02.06 Search Warrant – Defined

A Search Warrant is a written order, signed by the Tribal Chief Judge or Tribal Judicial Officer, and directed to the Tribal Law Enforcement Officer ordering him or her to conduct a search and seize items or property specified in the warrant. A Search Warrant shall describe the property or place to be searched, and shall describe the items to be seized, and it shall specify the time the warrant is in effect.

21.02.07 Issuance of Search Warrant

- (a) The Tribal Chief Judge or Tribal Judicial Officer shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the Tribal Court.
- (b) A warrant for search and seizure shall be issued only if the Tribal Court finds there is probable cause to believe that a search will discover:
 - 1) Stolen, embezzled, or otherwise unlawfully possessed property; or
 - 2) Property which has been or is being used to commit a criminal offense; or
 - 3) Controlled substances as defined by this title; or
 - 4) That the items identified in 1), 2), or 3) will be found in the place to be searched.
- (c) The warrant must be supported by a written and sworn statement by a reliable witness.

21.02.08 Execution and Return of Search Warrant

Warrants for search and seizure shall be executed only by Tribal Law Enforcement Officers. The executing officer shall return the warrant to the Tribal Court within the time limit shown on

the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not used and returned within such time limits shall be void.

21.02.09 Search Without A Warrant

No Tribal Law Enforcement Officer shall conduct a search without a valid warrant, except:

- (a) Incident to making a lawful arrest; or
- (b) With consent of the person being searched; or
- (c) When the officer has probable cause to believe that the person searched may be armed and dangerous; or
- (d) When the search is of a vehicle the officer believes may flee the Tribe's jurisdiction and the officer has probable cause to believe that it contains a controlled substance, stolen or embezzled property. The term vehicle includes other conveyances such as tractors, wagons, sleds, and wheelbarrows.

This title shall not prevent Tribal **Fish and Game (Fish & Wildlife)** Officers from searching without a warrant pursuant to a specific fish and game offense so long as the search is reasonable.

21.02.10 Disposition of Seized Property

- (a) Tribal Law Enforcement Officers shall make an inventory of all property seized by warrant or otherwise and a copy of such inventory shall be left with the person from whom the property was taken.
- (b) A hearing, as specified in **Section 17.04.06 General Impoundment Code** shall be held by the Tribal Court to determine the disposition of all property seized by Tribal Law Enforcement Officers. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is to be used as evidence in a pending case or is a controlled substance. Property taken as evidence shall be returned to the owner after final judgment. All unclaimed confiscated property shall become the property of the Tribe and may be destroyed, sold, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Tribal Court after consultation with the Tribe.

CHAPTER 21.03 SPEEDY AND PUBLIC TRIAL

21.03.01 Speedy and Public Trial

The Shoalwater Bay Tribal Court has the responsibility of insuring that each person charged with an offense under this title receives a speedy and public trial.

21.03.02 Length of Time

- (a) After the filing of the complaint against an individual, trial must be commenced within sixty (60) days, unless a longer period is requested or consented to by the accused.
- (b) If the accused is not in custody, the length of time for commencing the trial may be extended up to thirty (30) days to a total of ninety (90) days.
- (c) The Tribal Court on its own motion may continue or postpone the case only when required in the administration of justice and so long as the defendant will not be substantially prejudiced in any way by the delay.
- (d) Delays caused by a deferred prosecution, subject to **Chapter 21.09** of this title, shall not constitute impermissible or prejudicial delay.

CHAPTER 21.04 ARRAIGNMENT

21.04.01 Arraignment

- (a) Defined. Arraignment is a hearing at which the accused is brought before the Tribal Court, informed of the charge and his or her civil rights, given an opportunity to enter a plea, and where bail is set.
- (b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no case shall Arraignment or a Bail Review Hearing be held more than seventy-two (72) hours after an accused has been arrested and kept in custody.

21.04.02 Rights of Accused at Arraignment

Before an accused is required to plead to any criminal charge, the Tribal Judge or Tribal Judicial Officer shall:

- (a) Read to the accused and determine that he or she understand the complaint and the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty; and
- (b) Advise the accused that he or she has the right to remain silent; to be tried by a jury if jail time is a possible penalty; to be represented by counsel at the accused's own expense; and that the arraignment may be postponed if the accused desires to consult with counsel before entry of a plea.

21.04.03 Receipt of Plea at Arraignment

- (a) If the accused pleads "not guilty" to the charge, the Tribal Judge or Tribal Judicial Officer shall then inform the accused of a trial date and set conditions for bail or other release prior to trial.

- (b) If the accused pleads "guilty" to the charge, the Tribal Judge or Tribal Judicial Officer shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which the accused is waiving by the plea. The Tribal Judge or Tribal Judicial Officer may then impose sentence or defer sentencing for a reasonable time in order to obtain any information deemed necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.
- (c) If the accused refuses to plead, the Tribal Judge or Tribal Judicial Officer shall enter a plea of not guilty on the accused's behalf.
- (d) Upon a plea of not guilty being entered, the Tribal Judge or Tribal Judicial Officer shall set a trial date of not less than five (5) days nor more than sixty (60) days from the date of arraignment.
- (e) A person charged with an alcohol or drug offense may request to be considered for a deferred prosecution or a deferred judgment program under **Chapter 21.09** of this Title.

21.04.04 Withdrawal Of Guilty Plea

The Tribal Court may, in its discretion, allow an accused to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

CHAPTER 21.05 BAIL

21.05.01 Bail – Release Prior to Trial

Every person charged with a criminal offense before the Shoalwater Bay Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- (a) Release on Personal Recognizance upon execution by the accused of a written Promise to Appear at trial and all other lawfully required times. The Tribal Court shall establish a list of factors to be considered when determining whether an accused in custody shall be granted release on personal recognizance.
- (b) Release after deposit into the Tribal Court Account of bond in either cash or other sufficient collateral by the accused, his family, a friend, or a bondsman licensed by the **State of Washington**. The amount of bail shall be specified by the Tribal Judge, Tribal Judicial Officer, or bail schedule but in no case shall bail be set for more than five thousand dollars (\$5,000.00) per offense.
- (c) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required. Possible conditions include, but are not limited to, reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

21.05.02 No Bail

The protection of individuals and the community demands that certain persons be held without bail or bond in exceptional circumstances. The Tribal Court, in its discretion, may refuse to provide release but only in the following situations:

- (a) The person has been charged with a crime of violence; and 1) the person has been recently convicted of another crime of violence; or 2) the person has committed this offense while on probation or other release for another crime of violence; or
- (b) The person has been charged with obstructing justice by having threatened, injured, or intimidated a Tribal Judge, witness, or juror, or has attempted such threat, injury, or intimidation; or
- (c) There is strong likelihood of flight to escape trial. Such a finding requires a documented history of such flight, or evidence or circumstances indicating that such flight is likely; or
- (d) The person represents a significant danger to the community. Such a finding requires a pattern of behavior evidenced by past and present conduct and a determination that no conditions for release are available which would reasonably assure the safety of the community.

21.05.03 No-Bail Hearings

Denial of a right to bail or bond shall occur only after such request is made by the Tribal Prosecutor, and the Tribal Court has immediately held a Pretrial Detention Hearing and determined by clear and convincing evidence that there is a substantial probability that the accused committed the offense.

- (a) Where the Tribal Court finds that denial of bail or bond is proper, an order for detention shall be issued with the Tribal Court's findings of fact.
- (b) Where a person is held without bail or bond, his or her case shall be put on an expedited calendar and the trial shall be given priority over other pending cases. If a conviction results, the defendant shall be credited with the time served pending trial.

21.05.04 Bail – Release Pending Appeal

Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of this Title, unless the Trial Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a significant danger to community, to the accused or to any other person. If the Tribal Judge finds such to be the case, the detention of the accused may be ordered.

CHAPTER 21.06 SUBPOENA

21.06.01 Issuance of Subpoena

- (a) Upon request of any party to a case or upon the Tribal Court's own initiative, the Tribal Court shall issue a subpoena to compel the attendance of jurors, testimony of witnesses, or the production of books, records, documents, or any other physical evidence which is relevant and necessary to the determination of the case, and where the production of which is not an undue burden on the person subpoenaed.
- (b) A subpoena may be served by a Tribal Law Enforcement Office or the Tribal Court Clerk. Service of a subpoena shall be made by delivering a copy of it to the person named or by certified mail.
- (c) Proof of Service of the subpoena shall be filed with the Tribal Court Clerk by noting on the back of a copy of the subpoena the manner, date, time, and place that it was served and proof of service shall be signed by the person who actually served the subpoena.

21.06.02 Failure to Obey Subpoena

In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be found to be in Contempt of Court and a Bench Warrant may be issued for his or her arrest.

CHAPTER 21.07 SENTENCE

21.07.01 Sentencing

Any person who has been convicted of a criminal offense in the Shoalwater Bay Tribal Court may be sentenced to once or a combination of the following penalties:

- (a) Imprisonment for a period not to exceed the maximum permitted by the Code provision defining the offense, which in no case shall be greater than that permitted by Tribal or Federal law.
- (b) A fine in an amount not to exceed the maximum permitted by the Code provision defining the offense, which in no case shall be greater than that permitted by Tribal or Federal law.
- (c) Home detention may be imposed in lieu of imprisonment, provided that the circumstances of home confinement are sufficient to ensure compliance, including the detection of any violation. The rental cost of equipment required to ensure compliance, such as electronic detention bands, shall be borne by the offender.
- (d) Suspension or revocation of some or all privileges, licenses, and permits granted by the Tribe.
- (e) Enrollment in a treatment program.

- (f) Restitution or compensation of the injured party by means of the surrender of property, payment of damages, or the performance of any other service for the benefit of the injured party.

21.07.02 Time Payments

If a convicted offender is unable to immediately pay a fine or the assessed costs, the Tribal Court may allow him or her to make reasonable installment payments to the Tribal Court Clerk at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Tribal Court may find him in contempt of court and imprison the offender or impose additional sanctions.

21.07.03 Use of Prior Convictions in Sentencing

For subsequent violations of the criminal laws of the Shoalwater Bay Tribe, the Tribal Court shall impose more than any minimum penalty established for the offense. Multiple offenses arising from the same factual incident shall not constitute "subsequent" violations for purposes of this section. The Tribal Court shall impose one or more of the following penalties for subsequent violations of the criminal laws of the Tribe:

- (a) A fine and/or jail time in excess of the last sentence imposed; or
- (b) Forfeiture of property lawfully seized in connection with the offense; or
- (c) Suspension or revocation of some or all privileges, licenses, and permits granted by the Tribe.

CHAPTER 21.08 PROBATION

21.08.01 Probation

Where a sentence of imprisonment has been imposed on a convicted offender, the Tribal Court may, in its discretion, suspend the execution of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Tribal Court, provided that the period of probation shall not exceed the maximum term of sentence set for such offense in the Shoalwater Bay **Law and Order Code**, or five (5) years, whichever is less.

21.08.02 Violation of Probation

Any person who violates the terms of probation may be required by the Tribal Court to serve the sentence originally imposed, or such part of it as the Tribal Court may determine to be suitable, giving consideration to the circumstances. Before revocation of probation is ordered, the offender shall have the opportunity to explain his or her actions at a hearing before the Tribal Court. Said Court may also order the defendant's period of probation to be extended in lieu of revocation.

CHAPTER 21.09 DEFERRED COURT PROCEDURES FOR ALCOHOL AND DRUG OFFENSES

21.09.01 Request for Deferred Prosecution and for Deferred Judgment

A person charged with an offense allegedly committed while under the influence of drugs or alcohol may request to be considered for a deferred prosecution program or a deferred judgment program under this chapter. The request shall be made before trial. The person's request must state the following:

- (a) That the offense charged is the result of, or is caused by, their alcohol use, drug use, or dependency, for which the person is in need of treatment; and
- (b) That without treatment, there is a probability of future recurrence of similar misconduct; and
- (c) A history of the person's alcohol or drug use or dependency that is relevant to the current charge.

21.09.02 Drug and Alcohol Evaluation

Upon consideration of a request for either a deferred prosecution or deferred judgment, the Tribal Court may continue the arraignment and refer the person to the Tribe's or other alcohol or drug programs for diagnostic investigation and evaluation, the cost of which is to be carried by that person. The Counselor shall make a written report to the Tribal Court with a copy to the defendant including the following findings:

- (a) Whether the person suffers from an alcohol or drug dependency; and
- (b) Whether there is a probability that similar misconduct will recur if not treated; and
- (c) Whether effective treatment is available; and
- (d) The type of treatment recommended; and
- (e) If treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule, and cost.

21.09.03 Court Order Based on Evaluation Report

If the Tribal Court approves the plan, and the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof, the Tribal Court shall order that the defendant be accepted for either a deferred prosecution program or a deferred judgment program. If treatment is not recommended or not approved, or the defendant declines to accept the treatment plan, the defendant's prosecution shall resume.

21.09.04 Admissibility of Evidence

Evidence resulting from the defendant request and/or investigation or report shall be inadmissible in any trial on the charges, but may be used after conviction in determining a sentence if the defendant consents.

21.09.05 Failure to Comply with Conditions

If a defendant in either a deferred prosecution or deferred judgment program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall report the breach to the Tribal Prosecutor. Upon receiving such a report, the Tribal Court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution or deferred judgment program. If removed from deferred prosecution or deferred judgment program, the defendant's prosecution shall resume.

21.09.06 Effect of Subsequent Convictions

If a defendant is convicted in any court of a subsequent offense, similar to the one for which he or she is in a deferred prosecution or a deferred judgment program, the Tribal Court shall remove the defendant from the deferred program and the defendant's prosecution on the original charge shall resume.

21.09.07 Two Year Maximum for Deferment Programs

The length of the deferment program shall be left to the Tribal Court's discretion but in no case shall it extend for more than two (2) years from the date of the Court's approval of the defendant's deferred program.

21.09.08 Charges Dismissed

At the end of the deferred prosecution program, the charges against the defendant shall be dismissed. The dismissal shall constitute an absolute bar to a subsequent action involving the same claim.

21.09.09 Effect of Defendant's Delay

Delay in bringing a case to trial caused by a defendant requesting a deferred prosecution or a deferred judgment shall not be grounds for dismissal.

CHAPTER 21.10 EXTRADITION

THIS CHAPTER REVISED 02-05-2014

21.10.01 Extradition

- (a) **Authority of the Tribal Court** – Whenever the Shoalwater Bay Tribe receives a written request from the proper authorities of another Indian Tribe, the Federal Government, or any other state or local governments for the extradition of a person found within the exterior boundaries of the Shoalwater Bay Reservation who is charged with having committed a crime within the requesting jurisdiction, and who is using the reservation as an asylum from prosecution, the Tribal Court may, in its discretion, have said person arrested and delivered up to proper authorities of the requesting jurisdiction.
- (b) **Request for Extradition, Requirements** -- No request for extradition of a person charged with a crime in another jurisdiction shall be recognized by the Tribal Court unless it is in writing and accompanied by valid warrant or proof thereof.
- (c) **Investigation of Request** -- When a request is made to the Tribal Court by the proper authorities of another jurisdiction to surrender a person charged with a crime in said other jurisdiction, the Tribal Court may request that a Tribal Law Enforcement officer assist investigating the request and report to the Court the circumstances of the person so charged and whether they ought to be surrendered.
- (d) **Warrant of Arrest** -- See Part (j) Procedures for the Presentation of Foreign Court Arrest Warrants.
- (e) **Rights of Person Arrested; Hearing** -- When said person is apprehended, the arresting officer shall so notify the authorities of the requesting jurisdiction and shall take them forthwith before a judge of the Tribal Court. The judge shall inform the arrested person of the request made for their surrender and of the crime with which they are charged. The judge shall also inform the person that they have the right to legal counsel, at their own expense, and the right to test the legality of their arrest. If the arrested person or their counsel says that they desire to test the legality of the arrest, the judge shall allow the person a reasonable time within which to apply for writ of Habeas Corpus and shall set a date for a hearing on said writ.
- (f) **Warrant to Deliver** -- If from the hearing it appears that the person held is the person charged with having committed the alleged crime in the other jurisdiction, and that they are using the Reservation as an asylum from prosecution, the judge shall issue a warrant directing a Tribal Law Enforcement officer to deliver said person to the duly authorized agent of the requesting jurisdiction at the Reservation border.
- (g) **Confinement of Prisoner** -- If the person arrested does not request a hearing, they may be detained in the Tribal or contract jail for a period not to exceed twenty-four (24) hours from the time of apprehension. A person requesting a hearing shall be deemed to have waived the twenty-four (24) hour limit and may be held in jail for a reasonable

time pending the hearing. Bail shall be set at such a sum as the judge deems proper and shall be conditioned on the person's appearance in the Tribal Court at a specified time.

- (h) **Discharge from Custody** -- Provided there is no request for a hearing to oppose extradition, if the authority which issued the warrant does not take custody of the person arrested within twenty-four (24) hours after their apprehension by the Shoalwater Bay Law Enforcement officers, the arrested person shall be discharged from custody. In such a case, the Tribal Court shall require the requesting jurisdiction to provide a reasonable explanation for its failure to appear, and shall require the issuing authority's representative to accompany the Shoalwater Bay Law Enforcement officer to apprehend the person and take immediate custody after apprehension.
- (i) **Extradition from Other Jurisdiction to Reservation** -- The Shoalwater Bay Tribal Court may request the proper authorities of the federal, other state, other tribe, or local governments to deliver to the custody of the Shoalwater Bay Tribal Court any person subject to the jurisdiction of the Tribe who is charged with having committed a crime within the jurisdiction of the Tribe who is charged with having committed a crime within the jurisdiction of the Shoalwater Bay Tribe, and has fled into such other jurisdiction to avoid prosecution.

21.10.02 Court Rules for Recognition and Enforcement of Foreign Court Actions, Warrants, and Subpoenas

- (a) The name of this section of Court Rules is "Court Rules for the Recognition of Foreign Court Actions."

- (b) **Purpose**

The purpose of this section of Court Rules is to supplement Shoalwater Bay ***Title 1 Court Procedures*** and ***Title 2 Law and Order*** incident to Actions in the Recognition of Foreign Judgments, and provides for the enforcement of court actions, warrants, and subpoenas of foreign courts.

- (c) **Definitions**

For the purposes of this section, the following definitions will be used:

- 1) "Attorney" and "Lawyer" are synonymous and mean an individual who is admitted to practice before the Tribal Court beyond the level of Spokesperson.
- 2) "Tribe" mean the Shoalwater Bay Tribe including its agent and enterprises. "Other Tribe" means Tribe(s) other than the Shoalwater Bay Tribe.
- 3) "Court" and "Tribal Court" are synonymous and mean the trial level court of the Tribe.
- 4) "Day" means calendar day.

- 5) “Foreign Court” means any court other than the Tribal Court of the Shoalwater Bay Tribe, including federal, state, or tribal courts or courts of any foreign country.
- 6) “Foreign Judgment” means any final judgment, decree, or order from any foreign court regardless of whether the judgment is for money, injunctive relief, declaratory or any other relief.
- 7) “Final Judgment” means a decision of a trial court that settles the rights and obligations of the parties and disposes of all issues in controversy preventing re-litigation of the issues.
- 8) “Party” means a person concerned with or having been subject to a judgment, order, decree, warrant, subpoena, or other judicial act of a foreign court.
- 9) “Petitioner” means a party who has a judgment rendered in their favor.
- 10) “Rendering Jurisdiction” means the jurisdiction in which the foreign judgment was entered.
- 11) “Respondent” means the party against whom a judgment has been rendered.
- 12) “Subpoena” means a judicial order commanding a person to appear before a court to testify or produce other evidence, specific documents, records, or things, or to make a sworn statement at a time and place other than at a trial. A subpoena has a penalty for failing to comply with it.
- 13) “Warrant” means a judicial order directing or authorizing someone to do any act, including directing a law enforcement officer to make an arrest, search or seizure.

(d) Recognition of Foreign Court Actions

- 1) **Validity of Court Actions.** The judgments, orders, warrants, decrees, subpoenas, records of a foreign court, and other judicial actions are presumed to be valid and will have the same effect as Tribal Court orders, judgments, decrees, warrants, subpoenas, records, and actions. All foreign court orders, judgments, decrees, warrants, subpoenas, records, and actions shall be subject to the same procedures, defenses, and proceedings as those of the Tribal Court, subject to the provisions of this code.
- 2) **Reciprocal Recognition.** The recognition described in this section applies only if the foreign court provides reciprocal recognition and enforcement of Tribal Court judgments, orders, decrees, warrants, subpoenas, records, and other judicial acts.
- 3) **Compliance Provision.** Any person who seeks recognition of a foreign action must comply with the procedures set forth in Part (e) of this section.

- 4) **Presumption of Validity.** A judgment, order, decree, warrant, subpoena, records, or other judicial action of a foreign court which complies with this section is presumed to be valid.
 - 5) **Overcoming the Presumption.** To overcome the presumption of validity as set forth in Part (g) a person objecting must demonstrate that they are subject to the foreign court action, and:
 - a. The foreign court lacked personal or subject matter jurisdiction, or
 - b. The judgment, order, decree, warrant, subpoena, record or other judicial action of the foreign court:
 - i. was obtained by fraud, duress, or coercion;
 - ii. was obtained without reasonable notice;
 - iii. was obtained without a fair hearing;
 - iv. is repugnant to the public policy or laws of the Tribe, or
 - v. is not final pursuant to laws and procedures of the foreign court.
 - 6) **Foreign Court Arrest Warrants.** The person seeking recognition of a foreign court arrest warrant must comply with the conditions and procedures set forth in Part (j).
 - 7) **Foreign Court Search Warrants.** The person seeking recognition of a foreign court search warrant must comply with the conditions and procedures set forth in Part (k).
 - 8) **Full Faith and Credit.** This section does not apply to judgments or orders that federal law requires to be given full faith and credit.
- (e) **Procedures for the Recognition of Foreign Court Actions Except for Subpoenas and Warrants.**
1. **Application.** In accordance with the foreign court actions recognition provisions set forth in Section 4 of this section, a foreign action that is final is recognizable in the Tribal Court under the following procedure.
 2. **Registration of Foreign Court Action.** A person seeking recognition of a foreign court action shall:
 - a) **File a copy of the foreign court action with the Tribal Court.** The foreign court action must be authenticated by the clerk or registrar of the foreign court in the following manner:
 - 1) the clerk, registrar, or administrator of the foreign court must attest in writing that:
 - i. they are the clerk, registrar, or administrator of the foreign

- b) complete a proof of service.
2. Contents of the Notice. The notice of filing of the foreign court action shall include the following:
- a) the name and address of the Petitioner or the Petitioner's attorney, if any, and,
 - b) a statement giving notice to the Respondent that an "Order Granting Recognition of Foreign Court Action" shall be entered by the Tribal Court unless the Respondent files a written objection, with the Tribal Court within twenty-one (21) days of the date of service of the notice of the Respondent.

(g) Objections to the Filing of a Foreign Action

- 1. Time Limit for Objecting. A Respondent has twenty-one (21) days after notice to file a written objection to the recognition of the foreign court action. Any objection filed must include statements setting for the basis for the objection.
- 2. Entry of Order Absent an Objection. If no objection is filed by the Respondent within the twenty-one (21) day period, the Tribal Court will enter the "Order Granting Recognition of Foreign Court Action."

(h) Objection Filing; Hearing and Entry of Order

- 1. Notice of Objection. In the event that the Respondent files a written Objection, the Tribal Court Administrator shall:
 - a) send by first-class mail a copy of the Objection to the Petitioner or the Petitioner's Attorney;
 - b) set a hearing for the Objections; and
 - c) send a notice of the hearing to the Petitioner, the Respondent and their respective attorneys.
- 2. Burden of Proof. The Respondent at the Objection Hearing shall have the burden of proof by clear and convincing evidence to show why the foreign court action should not be recognized by the Tribal Court. An action that complies with this code is presumed valid. To overcome the presumption of validity the Respondent must meet the requirements of Section (d) paragraph 5.
- 3. Timeliness of Order. The Court shall enter an order either granting or denying recognition as soon as practicable but no later than seven (7) days after the close of proofs.

(i) Post-Judgment Proceedings

Following the entry of an “Order Granting Recognition of Foreign Court Action” the Petitioner may enforce that order in any manner legally available to the Petitioner, including post-judgment proceedings.

(j) Procedures for the Presentation of Foreign Court Arrest Warrants

1. Presentation of Foreign Court Arrest Warrant. A duly authorized law enforcement officer seeking recognition and enforcement of a foreign arrest warrant shall present the original, a copy, or a confirmed electronically valid warrant to the Tribal Police for presentation to the Tribal Court.
2. Warrant Requirements. Any arrest warrant that is presented to the Tribal Police for enforcement shall:
 - a) Contain the signature of the issuing judge or magistrate; and
 - b) Clearly set forth probably cause:
 - i. to believe that an offense has been committed; and
 - ii. that the person named has committed the offense.
 - c) If the Tribal Court decides that the request should be complied with, a judge of the Tribal Court shall sign a Tribal warrant of arrest directed to a Tribal Enforcement officer authorizing them to apprehend the person named in the warrant.

(k) Procedures for Presentation of Foreign Court Search Warrants

1. Warrant Requirements. Any search warrant that is presented to the Tribal Court for enforcement shall:
 - a) Contain the signatures of the issuing foreign court judge or magistrate;
 - b) Clearly set forth probably cause that a search will discover:
 - i. Stolen property, embezzled property, contraband or otherwise unlawfully possessed property, or;
 - ii. Property which has been or is being used to commit a criminal offense, or;
 - iii. Property which constitutes evidence of the commission of a criminal offense, or:
 - iv. Other evidence of a crime, or;
 - v. A person for whom an arrest warrant has been issued or will be issued contemporaneously with the issuance of the search warrant;

- vi. Reasonably describe the property to be seized and the place to be searched.
2. Presentation of Foreign Court Search Warrant. A duly authorized law enforcement officer seeking recognition and enforcement of a foreign court search warrant shall present the original or a copy of the search warrant to the Tribal Police who shall utilize it as an attachment for an application for a Tribal Search Warrant to be presented to the Court.
3. Issuance of Tribal Search Warrant in Conjunction with Recognition of Foreign Court Search Warrant. The Court shall authorize execution of a Tribal Search Warrant if probable cause is established and that the Court determines that none of the following conditions exists:
 - a) The foreign court lacks personal or subject matter jurisdiction incident to the investigation; or
 - b) The search warrant of the foreign court;
 - i. was obtained by fraud, duress, or coercion;
 - ii. is repugnant to the public policy or laws of the Tribe; or
 - iii. is not legal under the laws and procedures of the foreign court.
4. Execution of Search Warrant on Tribal Lands. Warrants of search and seizure shall only be executed in the presence of a Tribal Law Enforcement Officer if the place to be searched is Tribal Land.
5. Maintaining a Copy Warrant and Inventory. The Tribal Court shall receive and maintain a copy of any arrest or search warrant. Upon execution of any search warrant, a copy of the search warrant and itemized inventory of items seized shall be filed with the Tribal Court within the time limit shown on the face of the warrant, but no later than ten (10) days from the date of the issuance of the warrant, absent justifiable delay as determined by the Tribal Court.

(I) Procedures for the Recognition and Enforcement of Foreign Court Subpoenas

1. Recognition of Court Issued Subpoenas. The Tribal Court will only recognize subpoenas issued by foreign courts. Subpoenas issued by a party or an attorney for a party will not be recognized.
2. Tribal Court Order Required Before Service. Before any foreign court subpoena can be served on any Tribal member or person under the jurisdiction of the Tribal Court or custodian of Tribal papers and records the Tribal Court shall issue an Order allowing recognizing and enforcing the subpoena.
3. Registration of Foreign Court Subpoena. Any subpoena presented to the Court for recognition and enforcement must comply with the provisions set forth in this code.

4. Notification of Tribal Attorney. The Tribal Court shall notify the attorney for the Tribe, within three (3) days, when any subpoena is received requesting papers or records of the Tribe or requesting that any Tribal officer or employee testify.
5. Notice of Registration of Foreign Court Subpoena. Upon the filing of the foreign court subpoena and filing fee, the Tribal Court must within three (3) days mail, by first-class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the Respondent, at the address provided by the Petitioner, Respondent's attorney and Tribal attorney, and complete a proof of service. The notice of the filing of the foreign court subpoena shall include the following:
 - a) The name and mailing address of the Petitioner and Petitioner's attorney, if any; and
 - b) A statement giving notice that an "Order Granting Recognition of Foreign Court Subpoena" shall be entered by the Tribal Court unless the Respondent, the Respondent's attorney or the Tribal attorney files a written objection with the Tribal Court within seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers or records.
6. Notice of Deadline to File Written Objection.
 - a) The Tribal Court must mail a notice to the Petitioner, Respondent, Respondent's attorney and the Tribal attorney that states the Respondent, Respondent's attorney or Tribal attorney has seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers and records to file any written objection to the recognition of the foreign court subpoena.
 - b) Any objection filed must include a statement of the basis for the objection.
7. Entry of Order Absent Objection. In the event that the Respondent, Respondent's attorney or the Tribal attorney does not file any written objection within the seven (7) or fourteen (14) day period, an "Order Granting Recognition of Foreign Court Subpoena" shall be entered by the Tribal Court.
8. Objection. Only the person subject to the subpoena, their attorney, or the Tribal attorney may object to the subpoena under the following conditions:
 - a) Any objection must be filed in writing with the Court within the objection period as set forth in paragraph 5 b).
 - b) The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:

- i. the foreign court lacks jurisdiction over the person subject to the subpoena;
 - ii. the subpoena was obtained by fraud, duress, or coercion;
 - iii. the subpoena is repugnant to the public policy or laws of the Tribe; or;
 - iv. to honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.
 - c) The person filing the objection shall by first-class mail notify the foreign court that the issued subpoena of the objection within seven (7) days of the receipt of the subpoena.
 - d) If the subpoena is for papers or records, then the Court shall, upon the receipt of an objection from the custodian of the papers or records:
 - i. notify the attorney for the Tribe that an objection has been filed; and
 - ii. allow the Tribal attorney to appear on behalf of the custodian.
9. **Objection Hearing.** The Tribal Court shall schedule a hearing as soon as possible, but no later than fourteen (14) days after a written objection is received. The Tribal Court shall:
- a) Schedule a hearing on the objection.
 - b) Provide notice of the time, date, and place of the hearing to the issuing foreign court, the party requesting the subpoena and the person objecting, by first-class mail.
 - c) At the hearing, the person objecting has the burden of persuasion that the subpoena should not be enforced.
10. **Order.** The Tribal Court shall issue an order either granting or denying recognition of the subpoena. The Tribal Court shall enter an order as soon as practicable after the hearing, but no later than seven (7) days of the date of service of the order upon the Respondent and the Respondent's attorney.

21.10.03 Appeal to the Appellate Court

- 1. **Appeal of Order Granting Recognition of a Foreign Court Action, Except a Foreign Court Subpoena.** The Respondent or the Respondent's attorney may appeal and order granting recognition of foreign court action, except a subpoena, to the Appellate Court within seven (7) days of the date of the order upon the Respondent and the Respondent's attorney.
- 2. **Appeal of Order Granting Recognition of Foreign Subpoena.** The Respondent, Respondent's attorney or the Tribal attorney may appeal an order granting recognition of a foreign court subpoena to the Appellate Court within seven (7)

days of the date of service of the order upon Respondent, Respondent's attorney, or the Tribal Attorney.

3. Appeal of Denial of Recognition of Foreign Court Action and Subpoena. The Petitioner or the Petitioner's attorney may appeal the denial of recognition of a foreign court subpoena to the Appellate Court within seven (7) days of the date of service of the order denying recognition upon Petitioner and the Petitioner's attorney.
4. Stay of Execution of Tribal Court Order. If an appeal is filed in an action, any party may request a stay of execution from the Tribal Court within seven (7) days after the date of service of any order or ruling of the Tribal Court.

21.10.04 Citation Form

The abbreviated citation form for this Section of Court Rules is EXT.

21.10.05 Short Title and Effective Date

1. Short Title. These Rules are titled "Rules for the Recognition and Enforcement of Foreign Court Actions, Warrants, and Subpoenas."
2. Effective Date. The Rules become effective when adopted by the Shoalwater Bay Tribal Council.

21.10.04 Detention

- (a) When an alleged fugitive is apprehended and the Tribal Court has ordered extradition, it is the duty of the Shoalwater Bay Tribal Law Enforcement to notify proper authorities of the apprehension of the suspect immediately, and the suspect may be detained in the Tribal jail for a period not to exceed seventy-two (72) hours from the time of apprehension. If the lawful authority requesting the apprehension of the alleged fugitive or having notification of the detainment of an alleged fugitive does not take possession of the person within the seventy-two (72) hours after an order so allowing is issued, the alleged fugitive shall be released.
- (b) The Tribal Judge may order the continued detainment of the suspect beyond the seventy-two (72) hour period if the release of the person might reasonably be expected to endanger the alleged fugitive or if the alleged fugitive is believed to be a significant threat to the community at large.

21.10.05 Fugitive Hearing - Purpose

The purpose of the Fugitive Hearing shall be to determine if there is good reason to justify an order of extradition. The Tribal Judge's determination shall include, but is not limited to, consideration of the following factors:

- (a) whether the requesting entity has jurisdiction over the alleged fugitive; and

- (b) whether the alleged fugitive is being afforded due process of law by the entity requesting jurisdiction over the alleged fugitive; and
- (c) whether an order of extradition would be against the public policy of the Shoalwater Bay Indian Tribe.

CHAPTER 21.11 WRIT OF HABEAS CORPUS

21.11.01 Who May Prosecute Writ

Every person imprisoned or otherwise restrained of liberty on the Reservation, or by order of the Shoalwater Bay Tribal Court, may petition the United States Federal Court for a writ of habeas corpus to inquire into the reasons for such imprisonment or restraint, and if such reasons are found to be illegal, the detainee shall be released from custody by order of the Court.

21.11.02 Writ for Purpose of Bail

When a person is imprisoned or detained in custody on any criminal charge for want of bail, such detainee is entitled to a writ of habeas corpus for the purpose of giving bail, upon alleging that fact in the detainee's petition, without alleging that the detainee is illegally confined.

21.11.03 Application for, How Made

Application for the writ is made by petition, signed either by the detainee for whose relief it is intended, or by some person on that detainee's behalf, and must specify:

- (a) that the person on whose behalf the writ is applied is unlawfully imprisoned or restrained of liberty, why the imprisonment or restraint is unlawful, the officer or person by whom the detainee is so confined or restrained, and the place where the person is detained, naming everyone responsible for confinement, if they are known, or describing them if they are not known; and
- (b) the petition must be verified by the oath of affirmation of the detainee making the application or the person making the petition on that detainee's behalf.

21.11.04 Content of Writ

When the Tribal Judge or Tribal Judicial Officer is satisfied that the writ ought to be issued, it shall be issued without delay.

- (a) The writ shall be directed to the person having custody of or restraining the detainee, and must command him or her to bring the detainee before the Shoalwater Bay Tribal Court.

- (b) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ or in a copy of the petition attached to the writ.

21.11.05 Service of the Writ

The writ may be served upon the person to whom it is directed through the mail, return receipt requested as proof of service.

21.11.06 Return, What to Contain

The person upon whom the writ is served must acknowledge to the Court receipt of the writ within five (5) days and respond to the writ within a reasonable amount of time thereafter. The return must state:

- (a) whether he or she has the detainee in custody or under his or her power or restraint, and the authority to hold the detainee; and
- (b) if he or she had, but no longer has, the detainee in his or her custody or under his or her power or restraint, the return must state particularly to whom, at what time and place, for what cause, and by what authority custody was released; and
- (c) the return must be signed by the person making the return, except when such person is a sworn public officer and makes such return in an official capacity, it must be verified by the oath of the person making the return.

21.11.07 Hearing on Return

- (a) The detainee shall be brought before the person to whom the writ is directed when possible.
- (b) The hearing must be held within two (2) days before the filing of the return and may be summary in nature.
- (c) Evidence may be produced and compelled as in criminal and civil actions.

21.11.08 Judgment

- (a) If the detainee is in official custody, the detainee may not be released pursuant to habeas corpus proceedings for any technical defect in commitment not affecting the detainee's substantial rights.
- (b) Following the hearing, the Tribal Judge or Tribal Judicial Officer shall make such judgment regarding the custody of the detained person as the facts and circumstances warrant and such order shall be effective immediately.



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (206) 267-6766 • FAX (206) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION #10-07-93-72

WHEREAS, The Shoalwater Bay Indian Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; AND

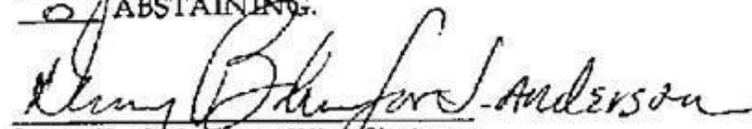
WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe and acts in accordance with the Constitution and By-laws; AND

WHEREAS, The Shoalwater Bay Tribal Council has the power and responsibility to enact ordinances and laws governing the conduct of all persons and pass any ordinances or laws necessary to govern the administration of justice and the enforcement of all laws, ordinances or regulations; AND

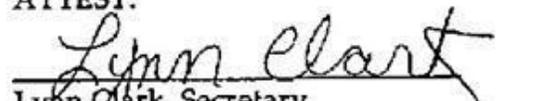
NOW THEREFORE BE IT RESOLVED, that the Shoalwater Bay Indian Tribe does hereby adopt the attached TITLE 21 - RULES OF CRIMINAL PROCEDURE, with provisions to amend as needed.

*****CERTIFICATION*****

The above resolution was passed at a regular Tribal Council meeting held on the 7th day of OCTOBER, 1993 at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 3 FOR, 0 AGAINST, and 0 ABSTAINING.


James M. Anderson, Vice Chairman
SHOALWATER BAY TRIBAL COUNCIL

ATTEST:


Lynn Clark, Secretary
SHOALWATER BAY TRIBAL COUNCIL



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION 02-05-14-10

RE: Title 21 Rules of Criminal Procedure – Section 10 Revision

WHEREAS, the Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on Shoalwater Bay Indian Reservation in Washington State,

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance to their Constitution and By-Laws;

WHEREAS, the Shoalwater Bay Indian Tribe is committed to retaining sovereignty and working to make our court system and law enforcement services as effective as possible;

THEREFORE BE IT RESOLVED, the Shoalwater Bay Tribal Council supports and approves the attached Shoalwater Bay Code Revision of Section 10 of the "Title 21 Rules of Criminal Procedure."

CERTIFICATION

This Resolution was passed at Shoalwater Bay Tribal Council Meeting of February 5, 2014, at which a quorum was present by vote of 5 FOR
0 AGAINST 0 ABSTENTION



Charlene Nelson, Council Chairperson
Shoalwater Bay Indian Tribe



Lynn Clark, Council Secretary
Shoalwater Bay Indian Tribe