HO-CHUNK NATION CODE (HCC)
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE
SECTION 7 – LAND CONSOLIDATION CODE

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Chapter I
General Provisions

1. **Authority.**

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, Resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

d. Article V, Section 2(i) of the Constitution grants the Legislature the power to

negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

e. Article V, Section 2(k) of the Constitution grants the Legislature the power to acquire or purchase lands for the benefit of the Nation and its members.

f. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, or permit or otherwise deal with the Nation's lands, interest in lands or other assets.

g. Article V, Section 2(m) of the Constitution grants the Legislature the power to enact laws to prevent the sale, disposition, or encumbrance of Ho-Chunk lands, or other Ho-Chunk assets.

h. Article V, Section 2(o) of the Constitution grants the Legislature the power to enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation.

i. Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

j. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

2. **Purpose**. This Code shall govern the Nation's process for acquiring fractionated homestead/allotment interest through the Indian Land Consolidation Program and through its members for the benefit and the continued existence of the Nation.

3. **Scope**.

a. This Code shall apply to all fractionated interests of allotments owned by the Ho-Chunk Nation and its members. The Code also provides and develops a process by which the members may convey their fractionated interest directly to the Nation for the benefit and continued existence of the Nation.

b. For the purposes of this Code, Tribal Lands means all lands held in trust for the Ho-Chunk Nation and its members by the United States of America, as defined by Article 1, Section 1 of the Constitution.

4. **General**.

a. The Ho-Chunk Division of Natural Resources (DNR) and the Register of Deeds Office (ROD) shall work cooperatively in processing and submitting Indian Land Consolidation Program information to the Land Development Team (LDT) for further recommendations to the Legislature.

b. The Division of Natural Resources is responsible for reviewing and researching the environmental aspects of properties which are offered to the Nation by the Indian Land Consolidation Program for consideration of purchasing available interest or are offered by the allottee directly to the Nation for consideration through gift, donation or direct sale.

c. The Ho-Chunk Register of Deeds Office (ROD) is responsible for the acquisition, filing and retrieval of legal records pertaining to lands owned by the Ho-Chunk Nation, including a record of all leases on the Nations properties.

5. **Duties**. The duties of the members of the Land Development Team are to perform due diligence, research and provide a collaborative recommendation to the Development Committee of the Legislature.

6. **Definitions**. The following terms shall have the meaning indicated:

a. "Allottee" means the individual owner(s) of an allotment or an allotment interest.

b. "Allotment property" means real property held in trust by the United States of America for individual Ho-Chunk members. Original homesteads/allotments were granted by the Federal Government to Ho-Chunk Nation members through the Dawes Act (also known as the General Allotment Act) in 1887. These trust properties currently are held by the United States of America through the Bureau of Indian Affairs for the heirs of a homestead/allotment. The Indian Land Consolidation Act (ILCA), enacted by the Federal government in 1983 (later amendments followed), provided for a method to prevent the further fractionation of these trust properties. Through ILCA, the Ho-Chunk Nation has acquired ownership in many homestead/allotments that were sold to the Nation through the Indian Land Consolidation Program by individual heirs of said homestead/allotments.

c. "Designated interest" means an allotment interest which has been designated to a defined individual through a valid will or other conveyance.

d. "Heir" means the person entitled to property or title as the legal successor.

e. "Fractionated interests" means a trust parcel owned by more than one owner as undivided interests. This is a result of land ownership interest being divided again and again as owners of the interests die and the interests are divided according to laws of probate or intestate succession.

f. "Heirship or Homestead property" means property granted to a head of household or individual by the Federal government. Historically, some of the Ho-Chunk Nation allotments were converted into homesteads and vice versa.

g. "Trust property" means those properties that are held in trust by the United States of America for the benefit of an Indian tribe or individual Indian members.

h. "Fee or Fee simple property" means real property wholly owned and controlled by the Nation or owned by an individual and subject to state tax.

i. "Purchase Restricted Trust property" means property held by the Bureau of Indian Affairs in trust for owners who are tribal members/heirs in which the Ho-Chunk Nation's ownership interest would be less than fifty (50) percent.

j. "Indian Land Consolidation Act (ILCA)" means the Act enacted in 1983 and its amendments thereto, specifically 1984 and 2000, which were enacted to reduce fractionation and to appropriate Federal funds for "buyback" of small interest on behalf of the Nation. *See Indian Land Consolidation Act Section 1721; See also Public Law 102-238.*

k. "Indian Land Consolidation Program (ILCP)" means the Federally funded program established by the Indian Land Consolidation Act (ILCA) for the purpose of acquiring and consolidating undivided fractionated interests in allotted trust lands in the name of the Nation for the benefit of its members.

l. "Undivided interest" means the allotment interests, which have been fractionated over the years and have not been subdivided through apportionment. Undivided interest can be characterized as co-owners sharing an entire tract collectively and who do not receive individual parcels within the tract for themselves.

m. "Transferee" means the individual allotment owner who is making the transfer to the Nation.

Chapter II
Nation's Process of Purchasing Fractionated Interests

7. **Participation.**

a. The Ho-Chunk Nation agrees to participate in the Indian Land Consolidation Program.

b. The Legislature shall appropriate a set amount in the Nation's annual budget for the purchase of fractionated interests.

c. The funds expended to satisfy said liens against the fractionated interests shall be used by the Indian Land Consolidation Program to purchase additional interests designated by the Ho-Chunk Nation.

8. **Notice of Available Interests.**

a. The Division of Natural Resources shall obtain from the Bureau of Indian Affairs Indian Land Consolidation Program, a list of all available interests for purchase by the Nation.

b. The Division of Natural Resources shall provide the list to the Land Development Team members.

9. **Review and Recommendation Process.**

a. The Land Development Team (LDT) members shall provide pertinent information regarding each available interest to the next scheduled LDT meeting.

b. Upon receipt of the list of all available interests for purchase, the LDT shall conduct all necessary inspections and reviews prior to making their recommendations to the Development Committee of the Legislature.

c. The Development Committee of the Legislature will designate a "purchase list," which shall be a declaration that indicates which of the available interests the Nation wishes to purchase.

d. The "Purchase List" will be posted in the Nation's official newspaper (currently the *Hocak-Worak*) for a 30-day comment period.

e. All comments received during the 30-day comment period shall be reviewed by the LDT. The LDT shall submit a written recommendation responding to the comments and forward the recommendation to the Development Committee.

f. Once the 30-day comment period expires, the Development Committee shall review the comments received and the recommendations of the LDT prior to making a referral to the full Legislature.

10. **Final Approval.**

a. In exercising its authority under the Indian Land Consolidation Act, the Legislature shall have the final approval for all purchases of undivided interests on the Nation's behalf.

b. The Legislature shall purchase undivided fractionated interests and property through passage by a written Resolution; a copy of the Resolution shall be sent to the Register of Deeds Office.

11. **Recording.**

a. Upon authorization to purchase the interest(s) by the Legislature, the Division of Natural Resources and Register of Deeds Office shall prepare all necessary information and communication with the Indian Land Consolidation Program for the purchase of the interest.

b. All heirship/allotment or fractionated interests purchased by the Nation shall be recorded with the Bureau of Indian Affairs and a copy shall be filed with the Register of Deeds Office.

c. The Register of Deeds Office shall file and maintain all documents relating to heirship, allotment or fractionated interests bought by the Nation.

Chapter III
Direct Transfer of Fractionated Interests to the Nation

12. **Initial Contact.**

Any owner of heirship property or fractionated interests seeking to transfer property to the Nation by sale, gift, or by other means, shall contact the Division of Natural Resources.

13. **Review and Recommendation Process.**

a. The Division of Natural Resources shall submit the request to the Land Development Team.

b. The Land Development Team shall conduct all necessary reviews and inspections of the property prior to submitting their recommendation to the Development Committee of the Legislature.

c. The Development Committee shall review the recommendations of the Land Development Team prior to the referral to the full Legislature.

14. **Final Approval.**

a. The Legislature shall have final authority to approve all transfers by Ho-Chunk members of fractionated interests to the Nation.

b. The Legislature shall purchase fractionated interests or heirship property through passage by a written Resolution; a copy of the Resolution shall be sent to the Register of Deeds Office.

15. **Publication.**

If the fractionated interest or heirship property is transferred to the Nation by sale, the Register of Deeds Office shall provide a copy of the Resolution for publication in the Nation's official newspaper (currently the *Hocak-Worak*).

16. **Recording of Interests.**

a. Any approved direct transfer to the Nation by sale, gift, or other means, of an existing fractionated interest shall be recorded with the Bureau of Indian Affairs. A copy shall be filed with the Register of Deeds Office, which will include the legal documents

providing for such transfer of interest (including but not limited to the deed and the contract for sale) and the Resolution accepting such transfer.

b. The legal documents filed with the Register of Deeds Office could include, but is not limited to, a deed to the Nation which reserves a life estate interest in favor of the transferee.

17. **Allottee to Allottee transfer.**

a. If the allottee, owner of a fractionated allotment interest, is seeking a transfer by sale, gift or other means to a family member, while both parties are living, the allottee shall be referred to the Bureau of Indian Affairs for assistance with the transfer of the interest.

b. If the allottee requests assistance, the Division of Natural Resources or the Register of Deeds Office may function as a liaison between the Ho-Chunk member and the Bureau of Indian Affairs.

18. **Transfers of interest after death.**

The American Indian Probate Reform Act or the Ho-Chunk Nation Probate Code shall be applicable to all heirship interests that are transferred by will or through probate after death of the owner.

Chapter IV
Purchasing the Nation's Allotment Interests by the Allottee

19. **Initial Contact.**

Any owner of allotment property seeking to purchase the Nation's minority interest in the allotment shall contact the Division of Natural Resources.

20. **Review and Recommendation Process.**

a. The Division of Natural Resources shall submit the request to the Land Development Team.

b. The Land Development Team shall review the request to determine if the interest in the allotment property is necessary to further a reasonable governmental interest or function. The LDT will also review the request to determine if any Federal laws apply. This review shall be completed prior to submitting their recommendations to the Development Committee of the Legislature.

c. The Development Committee shall review the recommendation of the Land Development Team prior to the referral to the full Legislature.

21. **Final Approval.**

a. The Legislature shall have final authority to approve all sales of the Nation's interest to the allottee.

b. The Legislature shall sell fractionated interests or heirship property through passage by a written Resolution; a copy of the Resolution shall be sent to the Register of Deeds Office.

c. If after the passage of a Resolution, the Bureau of Indian Affairs suggests that the sale would not be in the Nation's best interest; the Bureau of Indian Affairs should submit a written opinion or decision to the Ho-Chunk Nation President and the Vice President which should include its reasoning or analysis as to why this possible sale of the Nation's lands to the allottee would not be in the Nation's best interest.

22. **Recording.**

Any approved sale of the Nation's fractionated interest in allotment properties shall be recorded with the Bureau of Indian Affairs with a copy of the legal documents filed with the Register of Deeds Office. The copy filed with the Register of Deeds Office will include the legal documents (including the deed and the contract for sale or purchase) providing for such sale of the interest and the Resolution authorizing the sale of the interest.

23. **Money received from sale.**

All money received from the sale of the Nation's minority interest shall go back into the budget line item to purchase additional fractionated interests.

Chapter V
Jurisdiction and Consultation Process for Development on Allotted Lands

24. **Jurisdiction.**

a. The Ho-Chunk Nation's jurisdiction shall extend over all Ho-Chunk lands and territories as defined in the Constitution, including all allotments, fractionated interest, heirship properties, and any undivided interests, unless Federal law limits such jurisdiction.

b. All allotment or heirship property owners shall be subject to Ho-Chunk Nation laws and court orders.

25. **Consultation Process.**

a. All allottees shall have the right to comment on the Nation's proposed development of allotment interest through the Bureau of Indian Affairs comment and consultation process.

b. Any governmental department or other entity, acting on behalf of the Nation, shall utilize the Bureau of Indian Affairs comment and consultation process regarding development of fractionated interests or allotted lands prior to seeking approval from the Legislature.

c. Any governmental department or entity seeking to develop allotments shall provide documentation to the Legislature of the Bureau of Indian Affairs' consultation process that occurred with the allotment owners prior to actual development and consequently obtain a copy of a valid lease.

26. **Exclusion.**

The Nation has authority to exclude non-members from allotted or trust land pursuant to the *Exclusion Code*, 3 HCC §10.

Chapter VI
Recording Process for the Nation's Allotment Interest

27. **Recording.**

a. The Register of Deeds Office shall work cooperatively with the Bureau of Indian Affairs to obtain information regarding all existing allotment interests and any changes to ownership of the allotted lands.

b. All heirship/allotment or fractionated interests owned by the Nation shall be recorded with the Bureau of Indian Affairs and a copy shall be filed with the Register of Deeds Office.

c. The Register of Deeds Office shall create a filing process to maintain all legal documents regarding all allotted, fractionated, or heirship property interests owned by the Nation.

d. The Division of Natural Resources shall coordinate with the Bureau of Indian Affairs regarding the transfer of the designated property to the Nation.

28. **Fiduciary.**

The Bureau of Indian Affairs is the trustee for the Nation's lands, and as such maintains a fiduciary responsibility to the land owner and to the Nation.

29. **Validity.**

The invalidity of any section, clause, sentence, or provision of this Code shall not affect the validity of any other parts of this Code which can be given effect without such invalid part or parts.

30. **Sovereign Immunity.**

No section, clause, sentence or provision of this Chapter shall be construed as a waiver of the Nation's sovereign immunity.

31. **Effective Date.**

This Code shall take effect immediately upon passage of the Resolution of approval and adoption.

Legislative History:
5-21-09 Introduction to the Development Committee; Representative Lawrence Walker noted as Legislative Sponsor and referred to full Legislature for 45 day comment period.
6-10-09 Legislature approved for 45 public comment period.
9-22-09 Legislature approves the code by resolution 9-22-09C.