WHEREAS, the Sitka Tribe must be consulted under the provisions of ANILCA Title VIII before any federal land manager permits commercial harvesting of any plant traditionally and presently used by Sitka Tribal citizens; and

WHEREAS, since time immemorial it has been the responsibility of our Elders to teach the next generation the proper ways to gather, respect and use our traditional foods; and

WHEREAS, the Sitka Tribal Kayaani Commission is a group of Elders and experienced plant harvesters working together to preserve and share traditional Tlingit plant knowledge by documenting traditional Tlingit plant gathering guidelines for tribal youth in order they may understand and benefit from their Tlingit culture; and

WHEREAS, The method of traditional Tlingit plant harvest, use and preparation involve ceremony, spirituality and traditional religious practices important for the well-being of both the creator of the medicine and to the recipients and are therefore protected by the Religious Freedom Act: 'The medication that is on our land -up from the mountain on down to the sea … we can never let go of this. Someday its not going to take. Its not going to take. Because there are some for good luck - there's a need for them. There are some for bad luck. We have to speak to the leaves and to the ones that are out at sea we have to speak ...if its going to take, we are going to get it easy. If it is going to take. If it's going to help then we are going to get it easy. But if it is not going to help, we can't get it easy. This is something that I want to do...in Tlingit. We can't let go of it.'[1] ; and

WHEREAS, the Sitka Tribe of Alaska recognizes its tribal citizens' inherent right of access to the nutritional, artistic, religious, spiritual and ceremonial benefits of traditional plants and trusts that this ordinance will best accomplish the goals set forth above.

NOW, THEREFORE BE IT RESOLVED THAT THE SITKA TRIBE OF ALASKA DOES HEREBY ORDAIN AND ENACT THE FOLLOWING TRIBAL ORDINANCE:

CHAPTER 1: FINDINGS

The Sitka Tribe of Alaska finds that:

(a) Tribal peoples have forever relied upon plants and their traditional knowledge of the plants for food, medicine and the creation of artistic and utilitarian works and continue to rely upon plants for the very same needs today, as they will for generations to come; and

[1] Elder Naomi Kanosh. Kaagwaantaan, Eagle Nest House. Kayaani Neek, July 17, 1997.

(b) The traditional Tlingit customs surrounding plant harvest require that plants be harvested in a non-wasteful manner for personal, family, community benefit or for customary trade and barter with other villages and communities; and

(c) The Tlingit people of the Sitka Tribe's traditional territory, the Sheet'ka Kwaan, have regulated the use of plants and other resources from within their traditional territory since time immemorial through customs and traditions passed from generation to generation; and

(d) The social organization, traditional culture and physical health of Sitka Tribal citizens depend heavily upon the harvesting and use of traditional plant resources and should the traditional methods of plant harvest and use not continue, traditions and health might fade and the strength of the resulting medicine, art and food may not be that which it was once and this will adversely impact Tlingit culture and the next generation; and

(e) The traditional knowledge of how to create medicine, art, etc. from berries, grasses, timber and other plants taken from within the customary and traditional territory of a tribe is intellectual knowledge that is the property of one or more of the following: An indigenous individual, their family, their clan, their Tribe and in some cases, the entire Tlingit Nation. Because this traditional knowledge is tribal property, as such, it cannot be rightly appropriated and used by non-Natives for commercial gain.

CHAPTER 2: PURPOSES

The purpose of the Kayaani Commission Chartered under the Sitka Tribe of Alaska shall be to:

(a) Research and document tribal use of the plant resources, past and present, in the customary and traditional territory of the Sitka Tribe (Sheet'ka Kwaan). The resulting documentation will be the copy written property of the Sitka Tribe and will be used with Kayaani' s approval for plant and traditional education, conservation, preservation or for any other use identified by the Sitka Tribal Council or by tribal citizens and agreed upon by the Kayaani commission;

(b) Develop traditional plant gathering guidelines based upon Tlingit plant gathering methods practiced presently and historically;

(c) Actively seek input from local plant harvesters to be incorporated into the harvest guidelines;

(d) With Tribal Council approval, enforce the resulting harvest guidelines within the Sitka Tribe's traditional territory (Sheet'ka Kwaan) through education, well publicized open Kayaani meetings and continued consultation with the United States Forest Service (USFS) as outlined under the Memorandum of Understanding between the Sitka Tribe and the USFS and the provisions of ANILCA;

(e) Ensure that all concerned parties are made aware of the adoption of this tribal ordinance regarding the harvest of plants in the customary and traditional territory of the Sitka Tribe (Sheet'ka Kwaan) and the resulting plant harvest guidelines;

(f) Cooperate, when appropriate, with other governments, Tribes, communities and land managers to ensure that the Sitka Tribe will continue to represent and protect its tribal citizens' use and enjoyment of the plants that grow within their customary and traditional territory;

(g) Cooperate, when appropriate, with any and all concerned parties whose resource management philosophy is consistent with the traditional Tlingit customs embodied by Kayaani;

(h) Serve as advocates for the protection of customary and traditional use of plants by reporting to the Tribal Council as to whether applicable laws such as ANILCA Title VIII and the Religious Freedom Act are addressed in State and Federal land management policies and practices.

CHAPTER 3: DEFINITIONS

(a) The word *"Kayaani"* is a traditional Tlingit word for plants and is the name of the Sitka Tribal plant commission being formed.

(b) The word *"plants"* within this document shall include all traditionally and presently used seaweed, algae, kelp, grasses, berries, trees, roots, leaves, spores, stems, stalks, flowers, bark, timber, mosses, lichens, and any and all other plant biota that is eaten, used as medicine, used to create artwork or in some way appreciated by tribal citizens.

(c) The term *"traditional gathering guidelines* " refers to the traditional methods of plant gathering that Kayaani will document and endorses for use by the Sitka Tribal citizenry and interested Sitka residents. These gathering guidelines will be used to promote Tlingit education and as a tool for consulting with land managers charged with the responsibility of monitoring plant harvesting activities in the Tribe's Customary and Traditional Territory.

(d) The Sitka Tribe's *"Customary and Traditional Territory"* is also known as the Sheet'ka Kwaan. This area is understood to be the areas including the greater part of Peril Straits, the Southern and Southwestern sides of Chichagof Island, the northern and western sides of Baranof Island, and the myriad islands in this area (please see attached map). This territory reflects the traditional family/clan campsites used by Tlingit residents of Sitka for food harvest in the past and today. See attached map of the Sheet'ka Kwaan.

(e) The term *"Traditional knowledge"* refers to the traditional spiritual methods, means and ways of gathering, processing, utilizing and protecting traditional plants that is the exclusive property of Sitka Tribal citizens as a result of the intimate association that their ancestors fostered with their traditional territory and all of the marine, land, animal and plant life that naturally occurs within this territory. This intimate knowledge has been handed down since time immemorial and today is in the hands of tribal Elders who wish to protect and preserve this knowledge for the next generation.

(f) Traditional knowledge should be understood as "*intellectual property*" and as such, property cannot be appropriated and used to create commercial items intended for resale by people who do not possess the cultural birthright to such property.

(g) The term "*Tribal citizen*" shall mean any individual enrolled at the Sitka Tribe of Alaska.

(h) The term "*general membership*" of Kayaani shall mean all tribal citizens and residents of Sitka who have resided in Sitka for at least six months:

(1) Who abide by '*Chapter Five Plant Gathering*' within this Ordinance;
(2) Who follow the traditional gathering guidelines to be created by Kayaani; and
(3) Who reside and harvest within the customary and traditional territory of the Sitka Tribe of Alaska and/or the members of other Tribes, villages, bands or other interested parties who have elected to join Kayaani through "Chapter 12 Amendments" of this ordinance.

(i) For the purpose of this tribal ordinance "*commercial harvest*" will be understood to mean the permitted or non-permitted extraction of any and all plants from non-private land for resale or for inclusion into any product designed for sale.

(j) The term "confirmation" shall mean certification that the election process was conducted in accordance with the process established in this ordinance.

CHAPTER 4:SCOPE

(a) This ordinance addresses the harvest of all plant resources within the customary and traditional territory of the Sitka Tribe of Alaska.

(b) A Tribe, village, band or other group of interested individuals may, out of necessity, geographical proximity or similar interests and concerns wish to become a party to this ordinance. This may be accomplished through the "Amendment" procedures in Chapter 12 of this ordinance. All areas within the customary and traditional territory of any added Tribe, village, band or other group of interested individuals will automatically become part of this Ordinance and its citizens shall be considered as part of the "general membership" of Kayaani and as such will be expected to follow this ordinance and the policies and procedures of the Kayaani Commission.

CHAPTER 5: PLANT GATHERING/INTELLECTUAL PROPERTY RIGHTS

(a) Traditional plants may at any time be taken by any person from within the customary and traditional territory of the Sitka Tribe for personal use under Title VIII of ANILCA, the Religious Freedom Act and other applicable federal laws.

(b) General membership of Kayaani agree to:

(1) Take no more than is needed for personal, spiritual/religious and customary and traditional purposes (trade and barter, potlatches, etc.); and

(2) Gather in accordance with Kayaani's traditional gathering guidelines and within the seasonality and availability of any and all plants; and

(3) Respect plants and harvest them in a in a non-wasteful manner; and

(4) Respect Sitka Tribal citizens traditional plant knowledge as intellectual property and as such, property, cannot be used by non-tribal members for "*commercial gain*" without the approval of the Sitka Tribal Council; and

(5) Bring any commercial plant harvest proposals before first Kayaani and then the Sitka Tribal Council; and

(6) Abide by applicable State and Federal laws, this Ordinance and other guidelines and regulations as adopted by the Sitka Tribal Kayaani Commission.

CHAPTER 6:KAYAANI COMMISSION

Section 6.01 Commission Membership

(a) The Commission shall have four voting commissioners, and one voting Tribal Council member appointed by the Tribal Chairperson.

(b) The commission shall strive for a wide representation of plant users (for example, medicine makers, food harvesters, carvers, etc.) and all Commission members shall have some knowledge of traditional use of plants.

(c) Of the four voting commissioners elected by the general membership, one commissioner may be a non-tribal citizen.

(d) A person may not be a Kayaani Commissioner if he or she was formerly removed from the Commission under section 6.04 of this ordinance, unless such Commission decision was overturned by the Tribal Council.

Section 6.02 Term of Office

(a) The term of the Commissioner appointed by the Tribal Council chairperson shall be for one year.

(b) During the first election held in 2003,
(1) The non-tribal citizen, or general membership seat, will last for one year;

(2) The tribal citizen receiving the highest number of votes shall hold a three year term;

(3) The tribal citizen receiving the second highest number of votes shall hold a two year term; and

(4) The tribal citizen receiving the third highest number of votes shall hold a one-year term.

(c) Each year thereafter, Commissioner seats will be up for election and each elected commission shall hold a three-year term.

Section 6.03 Election of Commissioners

(a) Each year at the annual meeting held under Section 6.06(b) of this ordinance, elections for of Kayaani Commission shall be held.

(b) Nominations for Commissioners may be made for oneself or for another. No second is required for nominations. Nominated persons need not be present at the meeting. Nominated persons must be part of the general membership of Kayaani. If non-tribal citizens who are members of the general membership of Kayaani are nominated, no more than one may be elected.

(c) Once all nominations are complete, ballots will be created for voting.

(d) All persons present who are not tribal citizens who are part of the general membership of Kayaani may only vote for the general membership seat, if one is open. All tribal citizens present who are part of the general membership of Kayaani may vote for all open seats. No more than one non-tribal citizen may be elected to the Commission at any one time.

(e) The election results will be forwarded to the Tribal Council for confirmation at the next regularly scheduled Tribal Council meeting, or sooner if requested by the Commission.

(f) New commissioners will be inducted at the next Kayaani Commission meeting following the confirmation of the Tribal Council.

(g) If a commission seat is vacated before that commissioner's term is complete, the Commission shall appoint a commissioner to fill the open seat for the remainder of the uncompleted term, except for the commissioner who is appointed by the Tribal Council chairman. To facilitate such appointments, the Commission shall publicly announce the vacancy and request letters of interest from interested persons.

Section 6.04 Removal from the Commission

(a) A Commissioner may be removed for good cause, including, but not limited to, the following reasons:

(1) misconduct in office;

(2) unexcused absences from three (3) consecutive, regularly scheduled meetings of the Commission; or

(3) action by a Commissioner which is detrimental to the mission of the Commission, as determined by the Commission.

(b) Upon a finding of good cause under section (a), a Commissioner may be removed by a majority vote of the Commission at a regularly scheduled meeting of the Commission.

(c) Within three days after a Commissioner has been removed, the Commission shall provide written notice of the action to all Tribal Council members.

(d) A Commissioner who has been removed may appeal the action to the Tribal Court according to the Sitka Tribe's code governing tribal court rules and civil procedure.

Section 6.05 Duties of Commissioners

(a) Commissioners shall be equal in responsibility and there will be no election of officers.
(b) The recognized speaker for the commission will be the Elder of the commission. When possible, a Tlingit interpreter will assist the Commission Elder.

(c) The Commission shall be charged with the responsibility of documenting present day and traditional plant harvest practices for the creation of traditional harvest guidelines, assisted by Sitka Tribal staff and the support of the Tribal Council. This documentation will be used for education and for preservation of plants and their traditional uses and the traditional harvest guidelines will be used to protect the health and availability of plants for tribal citizens and Sitka residents. The Commission shall use the procedures set out in Chapter 7 of this Ordinance for public involvements in its plant gathering guidelines.

Section 6.06 Meetings

(a) The Commission shall hold monthly commissioner meetings when possible and more frequent meetings when needed. At the very least, Kayaani will meet as necessary.

(b) The Commission will hold at least one annual public meeting each year.
    (1) The purpose of this meeting is to (a) hold elections for Commissioners and (b) inform the General Membership of the Commission's activities for the year.
    (2) The public meeting will be publicized in a variety of media, beginning at least one week prior to its date.
    (3) The Commissioners whose seats are not up for election during the annual meeting will determine who will be in charge or running the annual meeting.

(c) A quorum shall consist of at least three voting Commission members. Unless otherwise provided in this ordinance, all action of the Commission shall be valid if approved by a majority vote of the voting Commissioners present at a duly called meeting where a quorum is present.

CHAPTER 7:DEVELOPMENT OF PLANT GATHERING GUIDELINES

The Commission shall use the following procedures for public involvement in its plant gathering guidelines:

(a) The Commission shall develop plant gathering guidelines for the approval of the Tribal Council. Once approved, these gathering guidelines will be posted for at least 30 days at the Sitka Tribal government offices at 456 Katlian Street, Sitka, Alaska 99835. These proposed gathering guidelines shall also be posted for at least 30 days at the City Post Office. During this time, proposed regulations and location information shall be announced at least once in the Sitka Tribal quarterly newspaper and/or in the local media for one week.

(b) No less than 30 days after the posting of the proposed gathering guidelines the Commission shall hold a public meeting for comments. After the public meeting the Commission shall hold at least one meeting at which the Commission will consider comments made by the public inspection. This meeting shall be held at the Sitka Tribal government offices at 456 Katlian Street, Sitka, Alaska, 99835.

(c) The final harvest guidelines shall also be posted at City Post Office and the Sitka Tribal government offices. During this time adoption of final gathering guidelines shall be announced at least once in the Sitka Tribal newspaper and in the local media for one week.

CHAPTER 8:SANCTIONS

Violations of any provision of this Ordinance or regulations of the Kayaani Commission can be referred to the Sitka Tribal Court.

CHAPTER 9:ENFORCEMENT

All plant harvesters within the customary and traditional territory of the Sitka Tribe of Alaska and the general membership of Kayaani have the responsibility to be on watch to ensure compliance with this Ordinance and the Commission's gathering guidelines and to report any violations to the Kayaani Commission.

CHAPTER 10: SEVERABILITY

If any portion of this Ordinance is determined by a Court of competent jurisdiction to be unconstitutional, or otherwise invalid, that portion may be stricken, but the remaining provisions shall remain effective.

CHAPTER 11: CIVIL RIGHTS

All proceedings conducted pursuant to this Ordinance shall be subject to the provisions of 25 U.S.C. 1302 and any other applicable laws.

CHAPTER 12: AMENDMENTS

(a) Proposals for amendments, including making other Tribes, villages, bands or interested groups party to this Ordinance, may be taken by the Commission, the Sitka Tribal Councilor IRA Councils which are parties.

(b) The Commission must pass the proposed amendment by a majority vote of those present at a duly convened meeting at which a quorum is also present. When a proposed Amendment is passed by the Commission, it must then be presented, by Resolution, to the Tribal Council of the Sitka Tribe. The Tribal Council may then approve the proposed Amendment as a part of this Ordinance. The Amendment shall then be posted for at least 30 days at the Sitka Tribal government offices at 456 Katlian Street, Sitka, Alaska, 99835. The Amendment and location for reading shall be advertised in the media and the Sitka Tribal Newsletter requesting that interested persons contact the Sitka Tribe for a copy.

CHAPTER 13: RESERVED SECTION

This section is being reserved for any future need or problem that may arise concerning the issues addressed in this Ordinance.

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