

Residential Homesite



Lease Ordinance

Residential Homesite Lease Ordinance
*Passed by Hualapai Tribal Council on
October 3, 2009; October 2009 Version.*

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.1 Title

Subtitle 0 of the Hualapai Environmental Review Code (HERC)

This Ordinance, which shall be known as the Hualapai Residential Lease Ordinance, is enacted pursuant to Article V (j) of the Constitution of the Hualapai Indian Tribe; (“to regulate the use and disposition of all land within the jurisdiction of the Tribe, in conformity with Article XI;”) (“XI-Section 1. No Allotments. All lands within the jurisdiction of the Tribe shall remain tribal property and shall not be divided by allotment in any way whatsoever to individuals, groups of individuals, or any other entity.”) of the Hualapai Indian Reservation, adopted by the Hualapai Tribe February 14, 1991, and approved by the Department of the Interior March 13, 1991 and in conformance to the 25 Code of Federal Regulations Indians Part 162.

Sec. 1.2 Sec. 1.2 Purpose

The purpose of this ordinance is to regulate and lease Hualapai Tribal land to Tribal Members for residential use only.

Sec. 1.3 Applicability

- (A) The provisions of this ordinance shall apply to all lands within the Hualapai Indian Reservation held by the United States in trust for the Tribe or held by Tribe in fee and does not apply to any property that may exist upon the land.
- (B) This ordinance shall apply to all enrolled Hualapai Tribal Members and their spouses desiring to establish residence on applicable Hualapai Tribal Lands. This ordinance shall not apply to leases of land by non-Tribal members for any purpose, or leases of land for other than Residential Use. These non-residential cases will be decided by the Hualapai Tribal Council on a case by case basis.

Sec. 1.4 Definitions

For purposes of this Ordinance, the following terms, when capitalized, shall have the following meanings:

- (A) **“Abandonment”** means a dwelling that has been deserted continuously for six months.
- (B) **“Applicant”** means a Hualapai Tribal Member applying for a Residential Lease pursuant to this subtitle.
- (C) **“BIA”** means the U.S. Department of Interior Bureau of Indian Affairs.

- (D) **“BIA Realty Office”** means the Realty Office of the BIA's Truxton Canyon Agency.
- (E) **“Burial”** means the act of burying a deceased person, sepulture, interment, act of depositing a dead body in the earth, in a tomb or vault, or in the water.
- (F) **“CFR”** means the latest edition of the Code of Federal Regulations, Indians 25, Office of the Federal Register.
- (G) **“Court”** or **“Tribal Court”** means the Hualapai Tribal Court or any branch or division thereof.
- (H) **“Department of Cultural Resources”** means the Hualapai Department of Cultural Resources.
- (I) **“Department of Natural Resources”** means the Hualapai Department of Natural Resources.
- (J) **“Environmental Document”** means an environmental assessment, as that term is defined and described in Subtitle A of the HERC (including sections 301e and 505); or a document setting forth a determination that proposed activity is excluded from the requirement of environmental assessment under applicable Tribal or federal law.
- (K) **“Good Cause”** means sufficient reason for legal action, as determined by a Court or the Tribal Council.
- (L) **“Hualapai Environmental Review Code”** or **“HERC”** means the land use and environmental code enforced by the Tribal Environmental Review Commission (TERC) per Tribal Resolution No 3 1-2004.
- (M) **“Hualapai Tribal Land”** means all lands over which the Hualapai Tribe has jurisdiction, including all land within the exterior boundaries of the Hualapai Reservation and all other Hualapai Indian country, as that term is defined in 18 U.S.C. 1 151. This includes but is not limited to approximately 1,000,000 acres on the southwestern edge of the Colorado Plateau and areas in Valentine (approximately 15 miles west of Peach Springs) and on the Big Sandy River (approximately 13 miles north of Wickieup and 50 miles southwest of Peach Springs).
- (N) **“Immediate Family”** means a spouse or domestic partner, father, mother, brother, sister, grandparent, father-in-law, mother-in-law, uncle or aunt, daughter, son, daughter-in-law, son-in-law, grandchild, niece, and nephew.
- (O) **“Lessee”** means a Tribal Member who has entered into a Residential Lease with the Hualapai Tribe approved by the Secretary of the Interior or its authorized representative.

- (P) **“Mobile Home”** means a mobile home approved by HUD.
- (Q) **“Non-Tribal Member”** means any individual who is not an enrolled member of the Hualapai Indian Tribe
- (R) **“Planning Department”** means the Hualapai Planning and Economic Development Department.
- (S) **“Reservation”** means the Hualapai Indian Reservation.
- (T) **“Residence”** means a designated piece of land leased to a Tribal Member for the purpose of Residential Use.
- (U) **“Residential Clearance Checklist”** means the document which must be completed by an Applicant describing location and available infrastructure, among other considerations, in connection with a proposed Residential Lease.
- (V) **“Residential Lease”** means a written agreement between the Hualapai Tribe and a Lessee, whereby the Lessee is granted a right to occupancy of Hualapai Tribal Land, for Residential Purposes for a specified duration.
- (W) **“Residential Use”** means use as a home and a homesite for the Lessee, and his/her Immediate Family, and for purposes incidental thereto. Residential Use does not include Burial, commercial uses or uses forbidden by law.
- (X) **“Tribal Council”** means Tribal Council of the Hualapai Indian Tribe, elected, existing and functioning pursuant to the Constitution of the Hualapai Indian Tribe.
- (Y) **“Tribal Environmental Review Commission”** or **“TERC”** means the administrative body established under Section 301 of the Hualapai Environmental Review Code (HERC) that is responsible for reviewing and regulating, including issuing permits for, all development activities that are proposed for any site within Hualapai Tribal Lands.
- (Z) **“Tribal Member”** means an enrolled member of the Hualapai Tribe.

CHAPTER 2. PROCEDURES FOR APPROVAL OF RESIDENTIAL LEASE

Sec. 2.1 Responsibilities of Applicant

A Tribal Member desiring to obtain a Residential Lease for purposes of establishing a Residence must work with the Planning Department to perform the following:

- (A) Select a preferred residential location, which is not a location currently leased, encumbered, or otherwise approved for use by another Tribal Member. This information may be obtained from the Planning Department.

- (B) Mark the comers of the proposed site with orange stakes, posts, or ribbons.
- (C) Measure the site and draw it on a map or plot plan, copies of which can be obtained from the Planning Department in sufficient detail to obtain an estimate of acreage included in the site, to ensure conformity with the size limitations set forth in section 3.1 below.
- (D) Complete a Residential Clearance Checklist and submit it to the Planning Department (see Appendix A), Copies of the Residential Clearance Checklists are available from the Planning Department.
- (E) Request from the Planning Department the Environmental Documents identified as necessary by the TERC.
- (F) Obtain a legal survey and legal description, and put on a plot plan, of the proposed site, at the Applicants expense and submit them to the Planning Department. The legal survey must be submitted within ninety (90) days of the Tribal Council's approval of the Resolution and Residential Lease as provided in Section 2.5. The Hualapai Tribal Council may grant a reasonable extension of time to submit the legal survey for good cause shown.
- (G) Submit a schedule of project time line to the Planning Department. This schedule will include a timeline for the construction or acquisition of a home and anticipated occupancy.
- (H) Submit the completed site drawing, Residential Clearance Checklist, the Environmental Documents stated in section 2.2 below and plan of residence, all as discussed above to the Planning Department for review and recommendation to the TERC and Building Code compliance is required.
- (I) A notice is required to the Planning Department if the lessee will be abandoning their homesite.

Sec. 2.2 Duties of Departments of Natural Resources and Cultural Resources

- (A) Upon request of the Applicant and the Planning Department, the Department of Natural Resources shall do the following, to the extent required by the TERC:
 - (1) Conduct a biological assessment regarding any species appearing on the U.S. Fish and Wildlife Service list, as well as any species of concern under Tribal law; and
 - (2) Prepare an environmental assessment of the proposed site.
- (B) Upon request of the Applicant and the Planning Department, the Department of Cultural Resources shall conduct a cultural resources survey of the proposed site.

Sec. 2.3 Review and Recommendation by TERC

Upon the completion of the requirements in sections 2.1 and 2.2 the Planning Department Shall submit a completed application package to the TERC, then with a recommendation for approval or disapproval by the Hualapai Tribal Council.

Sec. 2.4 Review and Recommendation by Planning Department

Upon completion of the review and favorable recommendation of the TERC pursuant to section 2.3 above, but before the completed application package is submitted to the Hualapai Tribal Council, if the TERC has recommended approval of the application package, on request by the Applicant, the Planning Department shall do the following:

- (A) Conduct a Residential Lease orientation;
- (B) Draft a Resolution for consideration by the Tribal Council;
- (C) Draft a Residential Lease to accompany the Resolution; and
- (D) Schedule a time on the agenda of an upcoming Tribal Council Meeting for consideration of the Resolution and Lease, and notify the Applicant of the date and time.

Sec. 2.5 Action by Tribal Council

If Tribal Council approves the Resolution and Residential Lease, the Applicant must sign the Residential Lease, obtain the signature of the Tribal Chairperson or other authorized appropriate Tribal representative and, if required, submit it to the BIA- Realty Office for approval by the Secretary of the Interior pursuant to 25 C.F.R. Part 162 and other applicable law. Each residential lease shall be subject to the terms of the applicable Tribal Council Resolution. Should the Tribal Council disapprove the application, the Tribal Council shall provide the Applicant a written explanation of denial; thereafter, the Applicant may reapply within six (6) months.

This homesite ordinance is developed to serve the Hualapai Tribal Community. It's basis la to form the best regulatory process; in some cases however it may appear that this ordinance may not be serving the community in it's best interests. In those cases that require further consideration the Tribal Council has the authority to make exceptions to these regulations.

Sec. 2.6 Role of BIA

The role of the BIA shall be to:

- (A) Review, approve, and record, any Residential Leases with Land Title Records Office (LTRO) upon any request pursuant to 25 CFR 150.6 CFR 162 Subparts A & F, and other applicable law.

CHAPTER 3. TERMS AND CONDITIONS OF RESIDENTIAL LEASES

Sec. 3.1 Limitations

- (A) Within the communities of Peach Springs, Valentine, and Buck and Doe subdivisions, approved individual Residential Leases may not exceed one (1) acre in size.
- (B) Except as provided in subsection A above, approved individual Residential Leases within the Reservation may not exceed five (5) acres in size.
- (C) No Tribal Member may simultaneously be a party to more than two (2) Residential Leases arising under this Ordinance.

Sec. 3.2 Duration of Leases

- (A) Every Residential Lease shall have an initial term of fifty (50) years, and renewal clause for an additional forty-nine (49) year term at the request of the Lessee, as allowed in 25 CFR 162.607(a).
- (B) In the event of the death of a Lessee prior to the expiration of the term of a Residential Lease; the Residential Lease and any property that exists upon the leased land will be determined by probate or interstate inheritance in accordance with the laws and customs of the Hualapai Tribe, and can only be reassigned to a Tribal Member. First preference will be given to the legal heirs of the Lessee if they are enrolled Tribal Members and if they are interested in the assignment. Notwithstanding the foregoing, any provision in a will that attempts to pass a Residential Lease to a Non-Tribal member is void; PROVIDED however, that the Court may authorize a surviving spouse with minor children of the deceased Lessee reach the age of 18 years. Any successor Lessee must sign an agreement, if requested, to be bound by the terms of the original Residential Lease. In addition, the provisions of 25 CFR 162.604(h)(l) shall be compiled with.

Sec. 3.3 Lessee Responsibilities

- (A) Every Residential Lessee shall be subject to the following:
 - (1) As a condition to the continued validity of the lease, the Lessee must complete construction of a residence, or place a mobile home that is the Lessee's established residence, on the site within two years from the date of approval of the applicable Resolution by the Tribal Council;
 - (2) The Tribal Council may grant an extension to the provision in 3.3(A)(1) of up to six months or longer upon a showing of Good Cause by the Lessee as to why the lease should not be cancelled; and

- (3) The provisions of 25 CFR 162.610 regarding limitations on subleases and assignments shall apply to each Lessee and Residential Lease.
- (4) If the homesite is located in a grazing district, the applicant must erect a fence around the residence prior to moving into the residence established thereupon. The fence must be a four-wire, five-wire barb wire, or four-foot high chained link type.

Sec. 3.4 Causes for Cancellation

The following conditions set forth below, but not limited to, will be cause for the cancellation of a Residential Lease with the Hualapai Tribe by the Tribal Council or a Court, in each case after notice and a hearing, or by the BIA to the extent allowed by law:

- (A) Violation of the Residential Lease;
- (B) Conviction of a criminal offense as described in Chapter 6 of the Hualapai Law and Order Code by a Lessee or a member of his or her Immediate Family who lives at the Lessee's Residence;
- (C) Relinquishment of Tribal membership by the Lessee;
- (D) Abandonment of the Residence by the Lessee;
- (E) Any other conditions set forth in the Tribal Council Resolution approving a particular Residential Lease, set forth in 25 CFR Part 162, or as otherwise provided by law.

The Tribal Council may adopt procedures for the provision of notice and for conducting hearings prior to cancellation of a Residential Lease.

Sec. 3.5 Negotiated Remedies for Violations and Appeal Process

Upon the cancellation of a Residential Lease, the Lessee shall have the rights and obligations set forth in 25 CFR Part 162, including those set forth in 25 CFR 5 162.113. In addition, the parties may negotiate any reasonable remedies, which shall be approved by the Tribal Council or a Court.

CHAPTER 4. CHAPTER 4: JURISDICTION AND GOVERNING LAW

Sec. 4.1 Jurisdiction and Venue

The jurisdiction and venue for action related to the subject matter of this Ordinance shall be the Courts of the Hualapai Tribe. All parties consent to the jurisdiction of such Courts.

Sec. 4.2 Governing Law; Interpretation

The provision of 25 CFR Part 162 shall govern and apply to this Ordinance. In the event of any possible inconsistencies among a Residential Lease, the Hualapai Residential Lease Ordinance and Federal Law, the provisions of applicable Federal Law, and Hualapai Tribal Law shall control, in that order.

APPENDIX A	Lease
APPENDIX B	Resolution
APPENDIX C	CFR

**HUALAPAI TRIBAL COUNCIL
RESOLUTION NO. 84-2009
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION
PEACH SPRINGS, ARIZONA**

(Revision to Residential Homesite Lease Ordinance of the Hualapai Nation)

WHEREAS, the Hualapai Tribal Council is the legislative body of the Hualapai Tribe and is empowered by the Constitution of the Hualapai Indian Tribe to enact legislation to regulate the use and disposition of all land within the jurisdiction of the Tribe; and

WHEREAS, pursuant to the Constitution of the Hualapai Indian Tribe, the Hualapai Tribal Council adopted a Residential Homesite Lease Ordinance on November 4, 2008; and

WHEREAS, the Hualapai Tribal Council finds it necessary to revise and amend Sections 1.4, 2.1, 3.1, and 3.3 of the Residential Homesite Lease Ordinance in order to regulate the use and disposition of all Tribal lands in a manner that meets the best interests of the Tribe.

NOW, THEREFORE, BE IT RESOLVED that the Hualapai Tribal Council assembled this 3rd day of October, 2009, does hereby approve the revisions and amendments to Chapter 1, Section 1.4, Chapter 2, Section 2.1, and Chapter 3, Sections 3.1 and 3.3 of the Residential Homesite Lease Ordinance as attached hereto as **Ex. A**; and

BE IT FURTHER RESOLVED that the effective date listed on the Title Page of the attached Residential Homesite Lease Ordinance shall be changed from November 4, 2008 to October 3rd, 2009, and that the version shall be changed from November 2008 to October 3, 2009; and

BE IT FINALLY RESOLVED that the attached amended sections 1.4, 2.1, 3.1 and 3.3 of the Residential Homesite Lease Ordinance shall go into effect immediately upon passage by the Tribal Council and that this Resolution and the attached amendments shall supersede all earlier versions of the Residential Homesite Lease Ordinance and all seemingly contradictory sections of the Residential Homesite Lease Ordinance passed prior to this date.

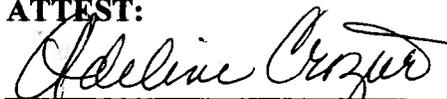
CERTIFICATION

I, the undersigned as Chairman of the Hualapai Tribal Council hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom (9), constituting a quorum, were present at a **Regular Council meeting held on the 3rd day of October 3rd, 2009**; and that the foregoing resolution was duly adopted by a vote of (5) in favor, (3) opposed, (1) not voting, pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe, approved March 13, 1991.



Wilfred Whatoname, Sr., Chairman
HUALAPAI TRIBAL COUNCIL

ATTEST:



Adeline Crozier, Assist. Secretary