

**Rules
to Implement the
Hualapai Environmental Review Code**



**Incorporating revisions
adopted in November 2013 by the
Tribal Environmental Review Commission
(TERC)**

**Tribal Council adoption on December 6, 2013
Resolution No. 83-2013**

NOTE

The Tribal Environmental Review Commission (TERC) administers a permit process pursuant to the Hualapai Environmental Review Code (Code), which was originally enacted in 1997, by Tribal Council Resolution 50-97. In 2006, the TERC developed Rules for the administration of the permit process, in accordance with the procedures for rulemaking set out in section 304 of the Code. The Tribal Council approved the Rules by Tribal Council Resolution 26-2007.

In June 2013, the TERC released a rulemaking document in which it proposed to make certain changes in its Rules, following the procedures set out in section 304 of the Code. This rulemaking process has been carried out by the TERC Board with assistance from the Department of Planning and Economic Development. The proposed changes were mainly in response to the enactment of a federal law captioned the “Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act.” Pub. L. No. 112-151. The HEARTH Act provides that an Indian tribe may lease its tribal trust lands directly, without requiring approval by the Secretary of the Interior acting through the Bureau of Indian Affairs, if the Tribe meets the requirements of the Act. To become authorized by the Secretary to lease tribal trust lands without BIA approval a tribe must have its own leasing regulations that are consistent with the BIA leasing regulations and must also have an environmental review process that meets the standards set out in the HEARTH Act.

The standards for environmental review in the HEARTH Act allow for a process that is less burdensome than the process under the National Environmental Policy Act (NEPA), especially when the activities authorized by a proposed lease would result in “significant” impacts on the environment. The changes that the TERC proposed to make in its Rules were mainly intended to make the process for environmental review of permit applications conform to the standards in the HEARTH Act for proposed development activities that do not require approval by the BIA. The TERC Rules do not address leasing under the HEARTH Act but, rather, only the environmental review process.

After the release of the proposed changes in its Rules, the TERC held a public hearing on July 17 and then held workshop sessions on August 20, 21, and 22. Through this process, the TERC received input from officials and staff of other Tribal agencies and from interested Tribal members. Further changes were made in response to discussions in the hearing and work sessions. The TERC then considered a revised version of the Rules at its meeting September 18, 2013. Minor additional changes were made and this final version of the Rules was approved by the TERC Board on November 18, 2013. The TERC Board also approved a rulemaking document that discusses the various changes that have been made. The primary author of both the final Rules and the rulemaking document is Dean Suagee of Hobbs, Straus, Dean & Walker, with substantial input and assistance from the staff of the Hualapai Department of Planning and Economic Development and the members of the TERC Board.

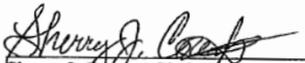
**HUALAPAI TRIBAL COUNCIL
RESOLUTION NO. 83-2013
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION**

**Rules of the Tribal Environmental Review Commission
Implementing the Hualapai Environmental Review Code**

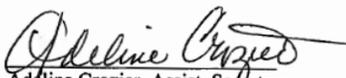
- WHEREAS,** the Hualapai Tribe is a federally recognized Indian Tribe located on the Hualapai Indian Reservation in northwestern Arizona with authority vested in the Hualapai Tribal Council by the Constitution approved March 31, 1991; and
- WHEREAS,** the Tribal Environmental Review Commission (TERC) administers a permit process pursuant to the Hualapai Environmental Review Code (Code), which was originally enacted in 1997, by Tribal Council Resolution 50-97; and
- WHEREAS,** in 2006, the TERC developed Rules for the administration of the permit process, in accordance with the procedures for rulemaking set out in section 304 of the Code, and the Tribal Council approved the Rules by Tribal Council Resolution 26-2007; and
- WHEREAS,** in June 2013 the TERC initiated a rulemaking process in which it proposed to make changes in its Rules, following the procedure set out in section 304 of the Code, with assistance from the Department of Planning and Economic Development; and
- WHEREAS,** on November 18, 2013, after receiving and considering input from staff of Tribal Government agencies and others, the TERC Board completed the rulemaking process by approving a final version of its revised Rules, along with a rulemaking document which explains the changes that have been made; and
- WHEREAS,** the changes are, in large part, in response to a federal law enacted in 2012, the "Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act," which provides that an Indian tribe may lease its tribal trust lands directly, without requiring approval by the Bureau of Indian Affairs (BIA), if the Tribe meets the requirements of the Act; and
- WHEREAS,** the HEARTH Act allows for an environmental review process under tribal law that is less burdensome than the process under the National Environmental Policy Act (NEPA) in that, if the activities authorized by a proposed lease would result in "significant" impacts on the environment, an environmental impact statement (EIS) would not be required; and,
- WHEREAS,** in keeping with the standards in the HEARTH Act, the changes in the TERC Rules provide that, for a permit application for proposed development for which the impacts would be significant and which does not require approval by the BIA, an EIS will not be required; rather, a less detailed document to be known as a "significant environmental impact report" will be required, as described in section 507 of the Rules; and.
- WHEREAS,** the TERC Rules are only concerned with the environmental review process and do not address the issue of whether or not the Tribal Council may choose to adopt regulations governing leasing tribal trust lands without BIA approval, as authorized by the HEARTH Act.
- NOW, THEREFORE BE IT RESOLVED** that the Hualapai Tribal Council approves the revised Rules of the Tribal Environmental Review Commission implementing the Hualapai Environmental Review Code.

CERTIFICATION

I, the undersigned as Chairwoman 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** thereof held on this **6th day of December, 2013**; and that the foregoing resolution was duly adopted by the affirmative vote of **(9) in favor, (0) opposed**, pursuant to the authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991.


Sherry J. Courts, Chairwoman
HUALAPAI TRIBAL COUNCIL

ATTEST:


Adeline Crozier, Assist. Secretary
HUALAPAI TRIBAL COUNCIL

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PART 1. INTRODUCTION

Section 101. Authority

Section 102. Purpose

Section 103. Scope

Section 104. Definitions

Section 101. Authority

(a) Hualapai Environmental Review Code. The authority for these rules is the Hualapai Environmental Review Code (herein the “Code”), Subtitle A, Environmental Review Process and Permit Requirements for Development, enacted by the Hualapai Tribal Council on August 4, 1997, Resolution No. 50-97.

(1) Authority of the Tribal Environmental Review Commission. Code Section 301(a) created the Tribal Environmental Review Commission (TERC) and delegated to the TERC the authority to:

review and regulate, including issuing permits for, all development activities that are proposed for any site within Hualapai tribal lands, in order to ensure that:

- (1) no development activity will be carried out without a permit; and
- (2) all development activities will be carried out in accordance with all applicable tribal and federal environmental protection laws and regulations.

Code Section 303(a)(1) specifically authorizes the TERC to issue these rules. In addition, a number specific provisions of the Code provide authority for some of the specific provisions of these rules, and references to such specific statutory provisions are provided at appropriate points in these rules.

(2) Role of the Tribal Planning Department. Section 103(a) of the Code designates the Tribal Planning Department, under the direction of the Hualapai Tribal Council, as “the primary authority for planning development within all Hualapai Tribal lands.”

(b) Tribal Council Resolution 31-2004. In addition to the Code, these rules are also based on Tribal Council Resolution 31-2004, which reinstated the Tribal Environmental Review Commission (TERC).

(c) Hualapai Building Code Ordinance. The Hualapai Building Code Ordinance, adopted by Tribal Council Resolution No. 45-2009, provides certain additional sources of authority for the TERC Board and Planning Department. Some of the provisions of these rules implement provisions in the Building Code Ordinance.

(d) Additional Authorities. The Planning Department will maintain a record of all actions by the Tribal Council affecting the authority of the TERC Board and Planning Department.

Section 102. Purpose

The specific purpose of these Rules is to establish procedures for carrying out the permit requirements of the Code. These Rules include procedures for the review of permit applications by the TERC Board to consider and make decisions on permit applications, and procedures for administrative enforcement. These rules also establish procedures for the Planning Department to provide support to the TERC Board in carrying out its mission, with opportunities for involvement by the staff of other tribal government agencies. The broader purpose of these Rules is to carry out the policies and purposes of the Code.

Section 103. Scope

(a) Activities Covered. The rules apply to all “development” activities as that term is defined in section 104 of these rules, except for those kinds of activities listed in, or incorporated by reference into, paragraph (d) of this section as exempt.

(b) Geographic Scope. These rules apply to development activities on all Hualapai tribal lands, including all lands within the exterior boundaries of the Hualapai Reservation and all other lands held by the Tribe and all trust allotments located outside the reservation boundaries.

(c) Persons and Entities Covered. These rules apply to all persons residing on or doing business on Hualapai tribal lands and to all property located on Hualapai tribal lands. As defined in section 104 of these rules, the term “person” includes any individual, any corporation or association, any governmental agency (federal, state, local, or tribal), and expressly include any program, agency, department, corporation or other entity established by the Hualapai Tribe. Each applicant for a TERC permit must consent to the civil regulatory and civil adjudicatory jurisdiction of the Hualapai Tribe for purposes related to such permit. A statement to that effect will be included in each application for a permit, with the applicant’s signature on the application evidence of such consent.

(d) Exempt Activities. Traditional cultural or religious practices carried out by members of the Hualapai Tribe are exempt from the permit requirements of the Code as implemented through these rules. In addition, the TERC Board has determined that certain kinds of activities are not “development” in that they will not result in a material change in a structure or in the use, appearance, quality or protection of land, water, or other natural resources or cultural resources, and that such kinds of activities should be treated as exempt from the permit requirement. The TERC Board also has determined that once a proposed development has been reviewed under these rules and a permit has

been issued, subsequent activities that were considered as included within the original permit are not subject to further review by the TERC Board. This class of exempt activities specifically includes construction that has been authorized by the issuance of a building permit pursuant to the International Code Council family of codes as adopted by the Hualapai Tribal Council when the use of land for the construction has been approved by the TERC Board through the issuance of a permit under these rules. A list of all exempt activities is provided in Appendix C of these rules. A person proposing to conduct an activity that is not included in the list of exempt activities may ask the TERC Board to issue a ruling that the proposed activity be treated as exempt.

Section 104. Definitions

“**Applicant**” means any person, including any developer (whether an individual, partnership, or corporate entity), and also including any tribal department or corporation, who applies for a development permit pursuant to Part 5 of this Subtitle.

“**Board**” means the Board of Commissioners of the Tribal Environmental Review Commission.

“**Building permit**” means a permit issued by the Planning Department pursuant to the International Code Council family of building codes as adopted by the Tribal Council, with code compliance review and approval conducted by the Planning Department.

“**Categorical Exclusion,**” as used in these rules, means any category of proposed development that is included in the TERC’s list of low-impact development (Appendix A) and, as such, generally does not require the preparation of an environmental assessment (EA). The use of this term in these rules is similar to the way in which the term is defined in federal regulations (40 C.F.R. § 1508.4), in which the term means a category of actions which do not individually or cumulatively have a significant effects on the human environment and which have been found to not have such effect in procedures adopted by a Federal agency in implementation of the regulations issued by the Council on Environmental Quality and for which, therefore, neither an environmental assessment nor an environmental impact statement is required, unless an extraordinary circumstance applies.

“**Cultural resource**” means any product of human activity or any object or place given significance by human action or belief. Places that may be cultural resources include buildings and other structures, landforms, archaeological sites, traditional cultural properties, and districts that are eligible, or potentially eligible for, listing on the Hualapai Register of Heritage Places or the National Register of Historic Places. Objects that may be cultural resources include artifacts and other physical remains of human activity, natural objects given significance by human action or belief, human remains and “cultural items” as defined in the Native American Graves Protection and Repatriation Act (funerary objects, sacred objects, and objects of cultural patrimony), and archaeological resources. Objects may be eligible for the Hualapai Register of Heritage

Places or the National Register of Historic Places if they are in some way connected to a specific place.

“Development” means the building of any structure, the making of any material change in the use or appearance of any structure, or the making of any material change in the use, appearance, quality or protection of land, water (including wetlands), other natural resources or cultural resources of the Hualapai Tribe. In Appendix C to these rules, the TERC Board has developed a list of certain kinds of activities that it does not regard as “development” for purposes of the Code and these rules. Activities that are treated as exempt in Appendix C do not require a permit under these rules.

“Environmental Assessment” or **“EA”** means a document required under Section 505 of the Code to be completed before applying for a general development permit in order to assist the Board in determining whether a proposed action may result in significant environmental impacts and to provide information for tribal planning and decision-making. An EA required under this Act must comply with any guidance issued by the Planning Department and must include brief discussions of:

- (1) the reason for and/or need for the proposed action;
- (2) alternatives to the proposed action if it involves unresolved conflicts concerning alternative uses of available resources, *provided that*, if the proposed action is consistent with the Tribe’s Land Use and Development Plan, the TERC Board presumes that there is no such unresolved conflict;
- (3) the environmental impacts of the proposed action and alternatives; and
- (4) agencies and persons consulted.

“Environmental document” means an environmental assessment (EA), finding of no significant impact (FONSI), finding of significant impact, environmental impact statement (EIS), or significant environmental impact report (SEIR).

“Environmental Impact Statement” or **“EIS”** means the detailed written statement required by Section 102(2)(C) of the National Environmental Policy Act, as amended, 42 U.S.C. § 4321 *et seq.*

“Extraordinary circumstance” means any circumstance on the list in Appendix B which, if present for a particular permit application, makes it inappropriate to treat the application as low-impact development. As such, if a permit application fits within a categorical exclusion but an extraordinary circumstance applies, then an environmental assessment is required.

“General development” means all development except "low impact" development.

“**Hualapai tribal lands**” means all lands over which the Hualapai Tribe has jurisdiction, including all land within the exterior boundaries of the Hualapai Reservation and all other lands held by the Tribe and trust allotments located outside the reservation boundaries.

“**Land disturbance**” means human events that will affect the natural environment.

“**Low impact development**” means those development activities listed in Appendix A of these rules, which the Board has identified as having little impact on the natural environment.

“**NEPA**” means the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

“**Person**” means any individual, public or private corporation, company, partnership, association or society of persons, the federal, state or local governments or any of their programs, agencies or departments, or any Indian tribe, including the Hualapai Tribe, or any of its programs, agencies, departments, corporations or entities.

“**Planning Department**” means the Department of Planning and Economic Development of the Hualapai Tribe which is designated by section 103(a) of the Code as the primary authority for planning development within all Hualapai tribal lands, and “**Planning Director**” means the Director of that Department.

“**Public**” means the people who may be affected by the environmental impacts of a proposed development, and generally includes tribal citizens and others who live or work within the Hualapai Reservation.

“**Significant Effect**” or “**Significant Impact**” means an effect or impact that significantly affects the quality of the human environment.

“**Significant Environmental Impact Report**” or “**SEIR**” means a document, prepared pursuant to Section 507 of these Rules, which analyzes significant environmental impact(s) when an EIS is not required because there is no proposed federal action to render NEPA applicable.

“**Significantly**” as used in these Rules has essentially the same meaning as in NEPA and requires considerations of both context and intensity:

(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, Tribal, or local law or requirements imposed for the protection of the environment.

“Traditional uses and practices” means those uses of the land and practices affecting the land that are a part of Hualapai culture and religious beliefs, set out in Appendix C to these rules, that are exempt from the permit requirements under the Code and these rules.

“Tribal Environmental Review Commission” or **“TERC”** or **“TERC Board”** means the administrative body established under Section 301 of the Code.

**PART 2. ORGANIZATION OF THE
TRIBAL ENVIRONMENTAL REVIEW COMMISSION**

Section 201. Composition of the TERC Board of Commissioners

Section 202. Authority of the TERC Board

Section 203. TERC Board Officers and Duties

Section 204. TERC Board Meetings

Section 201. Composition of the TERC Board of Commissioners

(a) Establishment of the TERC Board of Commissioners. The TERC Board of Commissioners was established by section 301 of the Hualapai Environmental Review Code.

(b) Term of Office. As provided in Section 301 of the Code, as amended, the term of office for members of the TERC Board is three years, although the term for some appointments may be less than three years so that the turnover in replacement of Commissioners is staggered. A Board Member may be reappointed.

(c) Resignation or Removal from Office. A member of the TERC Board may resign by providing written notice to the Chairperson. The Tribal Council may remove a member from office for failure to attend meetings and otherwise participate in the business of the TERC. Failure to attend three consecutive Board meetings without a valid excuse, as determined by the Chairperson of the Board, shall be considered grounds for removal from office.

(d) Vacancies. Vacancies on the Board, whether through resignation, removal from office, or the expiration of terms of appointment, shall be filled through appointment by the Tribal Council.

(e) Talent Pool. The Planning Department will develop and maintain a talent pool of candidates for consideration by the Tribal Council for appointment to the Board.

Section 202. Authority of the TERC Board

(a) Specified Powers. Code section 303 sets out a number of powers that are within the authority of the TERC. These specified powers of the TERC include, but are not limited to, the power to:

- (1) issue permits for development and other orders in response to applications for development permits;
- (2) assess and collect fees and service charges in connection with permit applications;
- (3) conduct hearings on permit applications and enforcement actions;

- (4) take administrative actions to enforce the Code and these rules; and
- (5) issue regulations (also known as “rules”) to carry out the TERC’s responsibilities under the Code.

(b) Reserved Authority of the Tribal Council. Code section 304(a)(9) expressly reserved the sovereign authority of the Tribal Council to rescind the authority of the TERC “for the welfare of the Tribe as a whole.”

(c) Delegation of Authority to officers and employees. Code section 303(b) authorizes the TERC Board to delegate any of its powers and duties to officers and employees, except the power to issue regulations.

(1) TERC Board Chair. The TERC Board hereby delegates to the Board Chair all the authority necessary to perform the duties of the Chair as specified in section 203 of these rules.

(2) Planning Department. The TERC Board hereby delegates to the Planning Department all the authority necessary to perform its duties as assigned in these rules. The Planning Director may assign an individual staff member within the Planning Department to serve as the primary staff contact for matters relating to the TERC. The TERC Board hereby authorizes the Planning Department to seek the voluntary cooperation of employees of all tribal government agencies in implementing the Code and these rules.

Section 203. TERC Board Officers and Duties

(a) Appointment of Officers. Two of the members of the TERC Board are designated to serve as Officers. These two Officers are: Chairperson, Vice-Chair, and Secretary. The Board members shall determine their officers through election once a year. Officers shall serve a term of one year, and may be re-elected without limitation. The names of the individuals serving in each of these offices shall be provided to the Tribal Administration and Tribal Council on an annual basis.

(b) Chairperson. The primary responsibilities of the TERC Board Chairperson are to: preside over meetings of the Board; sign documents in which decisions of the TERC Board are recorded, including development permits; to make decisions on applications for low-impact development permits; and to take all actions necessary for the functioning of the TERC when the Board is not in session. The responsibility to preside over meetings includes hearings pursuant to section 703 of these Rules, unless a Hearing Officer has been appointed. The Chairperson has the right to cast a vote on any matter that comes before the Board for a vote. In addition, the Chairperson is authorized to participate in the discussion of any matter that is before the TERC Board in a meeting.

(c) **Vice-Chair.** The primary responsibility of the Vice-Chair is to preside over Board meetings if the Chairperson is not in attendance or if the Chairperson requests the Vice-Chair to preside. The Chairperson may delegate to the Vice-Chair the authority to make decisions on applications for low-impact development permits, *provided* that any such delegation must be in writing.

(d) **Officers Pro Tem.** In the event that any of the officers is not present at a Board meeting for which a quorum is present, the Chairperson, if present, may appoint a Board member to serve as Vice-Chair Pro Tem for the duration of the meeting. In the event that the Chairperson is absent, the Vice Chair shall preside and shall appoint a Vice-Chair Pro Tem.

Section 204. TERC Board Meetings

(a) **Business Conducted in Meetings.** The TERC Board will conduct its business in meetings at which a quorum is present. Any matter within the Board's jurisdiction may be addressed in a properly convened meeting, *provided* that the notice requirements of paragraph (e) of this Section have been met. A Board meeting may include a hearing on any particular matter, such as an application for a development permit, administrative enforcement action, or an appeal from a Board decision. Board meetings will generally be open to the public, although the Board is authorized to hold closed sessions when it is deliberating on a decision or when the subject of discussion includes matters for which the need to maintain confidentiality has been raised.

(b) **Regular Meetings.** The TERC Board holds regular meetings on a monthly basis. Information regarding meetings is available from the Planning Department. The Board Chairperson may change the time, date, and place of a regular meeting for good cause as long as notice is given in accordance with paragraph (e) of this section.

(c) **Special Meetings.** The Board is authorized to conduct "special" meetings but will do so only in extraordinary situations, generally only in the context of administrative enforcement pursuant to part 7 of these rules. All Board business relating to the consideration of applications for development permits must be conducted in a regular meeting. In the event that the Board Chairperson determines that a special meeting is necessary or advisable in order to conduct an enforcement hearing, the Board Chairperson will call such a meeting and direct the Planning Department to issue notice in accordance with Part 7 of these rules.

(d) **Quorum.** A quorum for any Board meeting consists of four members of the Board, *provided* that either the Chairperson or Vice-Chair is one of those present. In the event that vacancies exist within the Board membership, a quorum will consist of a simple majority of the Board members holding office.

(e) **Notice.** The basic requirement for notice of TERC Board meetings is that notice shall be posted in the Tribal Office at least five (5) business days before the meeting. When a permit application is on the agenda for consideration in a TERC Board

meeting, the notice shall also be posted at the location where the development proposed in the application would occur. In addition, the Planning Department will make a good faith effort to provide written notice to the occupants of all buildings located within 300 feet of any parcel of land that is the subject of an application for a development permit and to any person who is the lessee of an adjacent parcel of trust land. The Planning Department is responsible for ensuring that notice is posted. For certain kinds of matters within the jurisdiction of the TERC Board, other provisions of the Code or these Rules may establish more specific requirements for notice, such as longer minimum time periods for notice. If a more specific notice requirement applies to a matter, such a matter may only be addressed in a TERC Board meeting if any such applicable requirements for notice have been met (except for discussion regarding the scheduling of such matters for consideration at later meetings).

(f) Procedures for Board Meetings. The Chairperson will preside over meetings of the Board and will ensure compliance with the requirements set out in these Rules. In general, the Chairperson will ensure that all members of the Board have the opportunity to speak on any matter that comes before the Board and that all persons whose interests are affected by a Board decision, including members of the public, have an opportunity to speak.

PART 3. PLANNING DEPARTMENT AND COOPERATION WITH STAFF OF TRIBAL AGENCIES

Section 301. Planning Department

Section 302. Cooperation with Staff of Tribal Agencies

Section 301. Planning Department

(a) **Planning Department.** The Planning Department will provide staff support to the TERC. The Planning Director will designate an individual as TERC Planner who will serve as the primary point of contact for applicants and other persons with an interest in applications for development permits.

(b) **Legal Counsel.** The Board may request that the Tribal Council authorize that an attorney be retained to serve as legal counsel to the Board and to assist the Planning Department in providing support for the TERC Board.

Section 302. Cooperation with Staff of Tribal Agencies

The Planning Department will work with the staff of appropriate tribal government agencies to establish a process to provide for the interdisciplinary review of applications for general development permits, that is, applications that normally require an environmental assessment. The Planning Department will ensure that any tribal agency, or federal agency, with jurisdiction over a proposed development project, or special expertise relating to the likely impacts of a proposed project, will have an opportunity to have a staff member meet with staff of the Planning Department to discuss the application.

PART 4. DEVELOPMENT PERMIT APPLICATION PROCESS

Section 401. Overview of Permit Application Process

Section 402. Procedure for Low-Impact Development Permit Applications

Section 403. Procedure for General Development Permit Applications

Section 404. Notice to Applicants and Other Interested Persons

Section 405. Application Fees and Service Charges

Section 401. Overview of Permit Application Process

(a) Initial Point of Contact. An applicant for a development permit should begin the application process by contacting the Planning Department.

(b) Guidance Documents for Applicants. The Planning Department may prepare guidance documents and application forms to help applicants and members of the public understand the permit application process. Any such guidance documents may be included in appendices to these Rules. Such documents are issued pursuant to section 303(a)(5) of the Code and are not considered to be rules. As such, guidance documents may be issued and revised by the TERC Board without following the rulemaking process set out in sections 304 and 305(b) of the Code. Guidance documents may be prepared on the following topics:

- (1) The application process for low-impact development permits, including how to determine if a proposal qualifies for treatment as low-impact development.
- (2) The application process for general development permits.
- (3) How to prepare an environmental assessment for a general development permit.
- (4) How to identify and achieve compliance with any requirements of federal or tribal environmental laws that may be applicable to the proposed development.
- (5) Any best management practices, pollution prevention practices, or best available current technologies that have been adopted by the TERC Board.

(c) Preparing the Application. The applicant for a development permit is responsible for preparing an application, including an environmental assessment if required as specified in section 501 of these Rules. The applicant is also responsible for any additional studies or reports that the Planning Department or a tribal agency with jurisdiction determines to be necessary for a decision to be made on a permit application. The Planning Department or tribal agencies may provide applicants with information regarding private firms that can be hired for assistance.

(d) Initial Meeting with Planning Department. An early step in the process of preparing an application is an informal meeting between the applicant and the Planning Department. The applicant may request such a meeting prior to preparing the application, or the applicant may begin the preparation of an application using guidance

documents provided by the Planning Department. At the initial informal meeting, the applicant will introduce the project to the Planning Department, who will explain the permit application process and respond to questions from the applicant. If the proposed activity does not appear to require a permit under these rules but has not been explicitly treated as exempt in Appendix C, the applicant may request a determination under paragraph (h) of this section.

(e) Low-Impact Development. The procedure for low-impact development is set out in Section 402 of these Rules. Development activities that qualify for treatment as low-impact development are listed in Appendix A of these Rules. During the initial meeting, if the proposed project appears to qualify for treatment as low-impact development, the Planning Department will be sure that the applicant knows about that option and, if the applicant chooses to use the low-impact development process, the Planning Department may provide the applicant with a document certifying its initial determination that the project qualifies for such treatment.

(f) General Development. The process for general development permit applications is set out in Section 403 of these Rules. If the project does not qualify as low impact development, the Planning Department may convene a meeting of tribal agency staff for review prior to a decision by the TERC Board. In some cases, prior to convening a meeting of tribal agency staff, the Planning Department may refer the application to the TERC Board for a determination of whether the application should be referred to the Tribal Council for conceptual approval before further consideration by the TERC Board. In all cases, the Planning Department will offer to meet with the applicant to discuss the proposed project and provide guidance on the information and documentation needed before the Planning Department can determine that the application is complete. When the application is complete, and has been reviewed by appropriate tribal agency staff, the Planning Department will prepare a staff report to the TERC Board and will schedule consideration of the application for a meeting of the TERC Board.

(g) Decisions on Permit Applications. The procedures for making decisions on permit applications are set out in Part 6 of these Rules. Those procedures are briefly summarized here.

(1) Low-Impact Development Permits. The application is reviewed by the Planning Department and, if the Planning Department determines that the application qualifies for treatment as low-impact development, the Planning Department prepares a permit for signature of the TERC Chairperson. Each permit signed by the TERC Chairperson is subject to review by the TERC Board.

(2) General Development Permits. After the Planning Department has determined that the application is complete and has filed a staff report, the TERC Board considers the application in a meeting. The Board may reach a decision in the meeting; it may reach a decision in a closed session after the open meeting; or it may decide to table the application and reconsider it at a later meeting in order

to develop a more complete record and to allow further opportunities for public comment.

(3) *Reconsideration and Judicial Review.* Decisions of the TERC may be subject to reconsideration pursuant to section 603(g) of these rules, or judicial review as noted in section 709.

(4) *Recommendations to Tribal Council.* A final decision by the TERC Board to issue a general development permit will normally be subject to approval by the Tribal Council.

(h) Determination that a Permit Is Not Required. In the event that there is some uncertainty regarding whether an activity is “development” for which a permit is required, the person proposing to carry out the activity may ask for clarification from the Planning Department. If the Planning Department determines that the proposed activity does not require a permit because it does not constitute development, or because the impacts of the proposed development have been adequately addressed in a prior decision by the TERC Board or by the Tribal Council, the Planning Department will prepare a written finding for signature by the TERC Board Chairperson. If the TERC Board Chairperson agrees and signs the finding, the finding will be placed on the agenda for a TERC Board meeting. If the TERC Board does not act to set aside the finding, the finding shall take effect on the next business day.

Section 402. Procedure for Low-Impact Development Permit Applications

(a) Filing of Application with Planning Department. Development activities that qualify for treatment as low-impact development are listed in Appendix A of these Rules. Any person may file an application for a low-impact development permit if the applicant believes that a proposed project qualifies for treatment as low-impact development, or if, after an initial meeting, the Planning Department has given the applicant a certification that the project appears to qualify for such treatment. The application shall be filed with the Planning Department and should conform to any guidance documents that have been issued by the Planning Department. As provided in Section 502 of the Code, the application must include a signed statement that:

- (1) the applicant believes that the proposed development qualifies as low-impact development as defined in these Rules; and
- (2) the applicant will comply with any conditions that the TERC Board Chairperson includes in the development permit.

(b) Referral to Tribal Agency Staff. The Planning Department will determine whether an application qualifies for a low-impact permit. The Planning Department may request the Tribal Agency Staff to provide advice on whether any of the extraordinary circumstances set out in Appendix B of these rules would apply to a proposed development and, as such, render the application inappropriate for treatment as low-impact. For any such referral, the application may be considered by Tribal Agency Staff

in a meeting that has been convened by the Planning Department. If such a meeting is held, the applicant will be invited to attend the meeting, but is not required to do so. After the meeting, the Planning Department will prepare a written summary of the meeting, including a statement on whether tribal staff attending agreed that the application does qualify for treatment as low-impact development. If a staff member from an agency with jurisdiction determines that any specific conditions must be included in the permit to avoid or mitigate the environmental impacts of the development, such a determination shall be recorded in writing, along with a recommendation of how such conditions should be specified (e.g., drawn from standardized best management practices or pollution prevention measures; written specifically for the proposed development). If a tribal staff member expresses a concern, based on relevant provisions of the Code or these Rules, that the application may not qualify for treatment as low-impact development, particularly if an extraordinary circumstance applies, the staff member may recommend that the Planning Department:

- (1) treat the application as general development; or
- (2) convey the concern to the applicant and offer to reconsider the application pursuant to paragraph (c) of this section.

(c) Reconsideration by Planning Department. If the Planning Department determines that the application as filed does not qualify as low-impact development, but tribal agency staff have suggested that the application would qualify as low-impact development if certain changes were made, the Planning Department will so advise the applicant, including an explanation of the concerns that have been raised. The applicant may revise the application and ask for reconsideration, or the applicant may choose to have the application treated as general development.

(d) Preparation of Low-Impact Development Permits. If the Planning Department determines that an application qualifies for treatment as low-impact development, the Planning Department will prepare a low-impact development permit. The permit may include conditions deemed necessary or advisable by the Planning Department and/or any conditions that may have been specified by staff of a tribal agency with jurisdiction. Each such permit shall be prepared for the signature of the TERC Board Chairperson. The Planning Department shall provide a copy of each such permit to any tribal agency with jurisdiction, except that the Planning Department need not provide an agency with a copy if a staff member of that agency has advised the Planning Department by phone or email that the agency does not need a copy.

(e) Action by TERC Board Chairperson. Upon review of an application and agreement with the recommendations of the Planning Department, the TERC Board Chairperson will sign the permit. Any such signed permit is subject to review by the TERC Board and does not become effective until the TERC Board has had an opportunity for review as provided in section 602 of these Rules. If the TERC Board Chairperson does not agree with the recommendation of the Planning Department and instead decides that the application should be treated as general development, he or she will decline to sign the permit and direct the Planning Department to inform the applicant of this decision. The TERC Board Chairperson may also determine that, although the

permit application is properly considered low-impact, the application is not complete and as such is not ready for approval; in such cases the Planning Department will advise the applicant regarding steps needed to make the application complete.

(f) Notice. The Planning Department will post notice of the issuance of any low-impact development permit that has been signed by the TERC Board Chairperson and referred to the TERC Board. Such notice shall be posted in the Tribal Office and other locations as specified in section 204 of these Rules. Any such notice may include more than one signed low-impact permit as long as each such permit is specifically identified. The notice shall be posted no less than five (5) business days prior to the TERC Board meeting at which such permit(s) may be subject to review. The notice shall include the following statements:

- (1) Any person who objects to a permit may file a written objection with the Planning Department within the deadline specified in the notice, which shall be at least five (5) business days after the date on which the notice is posted.
- (2) Any member of the TERC Board may request that a permit be reviewed in a TERC Board meeting.
- (3) If for any specific permit, a written objection is filed, or a TERC Board member files a request for review, within the deadline provided in the notice, such permit will be reviewed in a Board meeting, as provided in section 602 of these Rules.
- (4) If no objection or request for review is filed with respect to a permit, such permit shall take effect on the next business day after the deadline for filing an objection or request for review.

(g) Logbook of Low-Impact Development Permit Applications. The Planning Department shall maintain a logbook of applications for low-impact development permits, which shall be made available for public inspection during normal business hours. The logbook shall include basic information about each pending application, including: name of applicant, location, and brief description of proposal. Each project under consideration shall be entered into the logbook no later than two days after the filing of an application or the initial meeting between the applicant and the Planning Department, whichever occurs sooner. The logbook will be updated on a regular basis to indicate the status of pending applications, and will include entries for:

- (1) the date on which an application is submitted;
- (2) the date that the Planning Department, in consultation with the Planning Director, determines that the application qualifies for treatment as low-impact;
- (3) if the Planning Department refers the matter to tribal agency staff, the date of such referral, date of consideration by the tribal agency staff (and reconsideration, if applicable), and the recommendation of the tribal agency staff;
- (4) the date on which the TERC Board Chairperson signs the permit (which has been prepared by the Planning Department), or decides that it shall be treated as general development;

- (5) the date of notice pursuant to subsection 402(f);
- (6) notation as whether an objection or request for review is filed;
- (7) if an objection or request for review is filed, date of TERC Board meeting at which the permit is on the agenda, with a notation of action taken by the Board (i.e., issue the permit, deny the permit, or treat as a general permit);
- (8) if a low-impact permit is issued, the effective date of the permit; and
- (9) dates on which post-permit monitoring site investigations are made.

Section 403. Procedure for General Development Permit Applications

(a) Written Application Required. The applicant for a general development permit is responsible for preparing a written application, in accordance with any guidance documents that have been developed by the Planning Department. Documentation requirements for permit applications are set out in Part 5 of these Rules. An application for a general development permit normally requires an environmental assessment (EA).

(b) Filing of Application with Planning Department. The applicant is responsible for filing a written application with the Planning Department. The Planning Department is not obligated to act on a permit application until a written application is filed. The applicant may indicate that the application is not yet considered to be complete; or it may be labeled “draft.” An application may require some revision or additional documentation before the Planning Department determines it to be complete. The TERC Board relies upon the Planning Department to review each application, including the EA, and to determine when it is ready for consideration by the TERC Board.

(c) Meeting(s) with Tribal Agency Staff. The Planning Department may convene a meeting with staff of tribal agencies with jurisdiction or special expertise with respect to an application in order to seek their assistance in reviewing the EA for the application. If such a meeting is convened, the applicant will be asked to attend. In discussing the proposed project, tribal agency staff may:

- (1) seek to identify “issues, opportunities, and concerns” (IOCs);
- (2) seek to identify possible alternatives to the project and/or suggest mitigation measures;
- (3) make an initial determination of issues that are likely to require consultation with, or clearance from, tribal or federal agencies;
- (4) make an initial determination of whether the proposed project would be consistent with the Hualapai Land Use and Development Plan, or, if not consistent, consider whether a plan area amendment would be appropriate; and,
- (5) advise the applicant on whether the TERC has adopted any best practices, pollution prevention measures, or best available current technologies (BACT) that apply to the project.

(d) Summary Sheet. If a meeting with tribal agency staff is held, the Planning Department will ensure that the applicant is provided with a summary sheet that briefly summarizes the discussion that took place in the meeting regarding the five items listed in paragraph (c) of this Section.

(e) Additional Meetings. The applicant may bring an application back to the Planning Department and ask for a meeting with tribal agency staff at any time during the preparation of an application. If the Planning Department has provided specific guidance on steps that need to be taken to complete the application, including consultation with tribal or federal agencies and/or the preparation of an environmental assessment or other documentation, the Planning Department expects that an applicant will have made some progress in acting on such specific guidance before bringing the application back and asking for an additional meeting with tribal agency staff.

(f) Determination of Completion. When the Planning Department determines, in consultation with the Planning Director, that an application is complete, in that it includes all the information necessary for the TERC Board to make a decision, the Planning Department will make a record of such determination and inform the applicant. When an application has been determined to be complete, the Planning Department will include it on the agenda for a Board meeting. An application must be determined complete at least ten (10) business days before the date of the Board meeting in which it is scheduled for consideration.

(g) Determination of Significance. As provided in Section 505 of these Rules, the Planning Department shall make a recommendation for a finding, based on the EA, of whether the impacts of the proposed development will or may be significant. This recommendation will be presented to the TERC Board for action.

(h) Staff Report. After a general development permit application has been determined to be complete, the Planning Department will prepare a staff report to the TERC Board, which will set forth recommendations for the Board's consideration. The staff report shall include:

- (1) a statement that the EA was determined to be adequate (or, if a federal agency with jurisdiction has decided that an EIS is required, the agency has released the final EIS);
- (2) a summary of the Planning Department's recommendations for a finding on the significance of the environmental impacts (unless a federal agency with jurisdiction has decided that an EIS is required);
- (3) a finding regarding compliance with any applicable environmental review and consultation requirements of federal law or other tribal laws or regulations;
- (4) a finding regarding the consistency of the proposed development with the Tribe's Land Use and Development Plan;
- (5) a recommendation on whether the TERC Board should grant the permit, deny it, or grant it with conditions;
- (6) a summary of any conditions or terms recommended by tribal agency staff in the event that the TERC Board decides to issue the permit; and

- (7) if any tribal agency staff member disagrees with any point in items (1) through (5) and has prepared a written statement expressing such views, such a statement shall also be included.

(i) Revised Staff Report. After the staff report has been delivered, if a decision is made to require preparation of an EIS or SEIR, a revised staff report will be prepared following release of the Final EIS or SEIR and responses to comments.

(j) Decisions on Applications by the TERC Board. The TERC Board will consider permit applications and make decisions in accordance with the procedures set out in Part 6 of these Rules.

(k) Logbook of General Development Permit Applications. The Planning Department shall maintain a logbook of applications for general development permits, which shall be made available for public inspection during normal business hours. The logbook shall include basic information about each pending application, including: name of applicant, location, and brief description of proposal. Each project under consideration shall be entered into the logbook no later than seven days after the filing of an application or the initial meeting between the applicant and tribal agency staff, whichever occurs sooner. The logbook will be updated on a regular basis to indicate the status of pending applications, and will include entries for:

- (1) the date on which an application is submitted to the Planning Department;
- (2) the date that the Planning Department, with concurrence by the Planning Director, determines that the application is complete;
- (3) the dates of all tribal agency staff meetings at which the application is discussed, with an indication of whether the applicant and/or any interested third person was present during such discussions;
- (4) the recommendation regarding the significance of the impacts, and date made;
- (5) the determination by the TERC Board regarding the significance of the impacts, and the date of such determination;
- (6) the status of the EIS or SEIR, if applicable;
- (7) the date of the staff report on the application, with a notation of the recommendation in the staff report to the TERC Board (that is: grant the permit, deny, or grant with conditions);
- (8) the decision by the TERC Board and the date of the decision;
- (9) the decision by the Tribal Council and the date of the decision; and
- (10) dates on which post-permit monitoring site investigations are made.

Section 404. Notice to Applicants and Other Interested Persons

(a) Notice to Applicants. When an application has been scheduled for consideration in a meeting of tribal agency staff, the Planning Department shall provide notice to applicant, by telephone and/or email with written confirmation by mail. The notice shall be provided as soon as practicable after the scheduling decision is made, and in any case at least two (2) business days before the meeting. (Since this is a meeting of

tribal agency staff and not a meeting of the TERC Board, the notice requirements of section 204 of these Rules do not apply.)

(b) Notice to Interested Persons. If any person has filed a written request with the Planning Department asking to receive notice of a tribal agency staff meeting at which a specific application will be considered, the Planning Department will provide notice to such person when notice is provided to the applicant. In addition, the Planning Department will make a good faith effort to provide written notice to the occupants of all buildings located within 300 feet of the any parcel of land that is the subject of an application for a development permit and to any person who is the lessee of an adjacent parcel of trust land.

Section 405. Application Fees and Service Charges

Section 509 of the Code provides that the TERC Board “is authorized to charge applicants filing fees for the costs associated with processing applications and to assess service charges for the costs of helping applicants complete their applications” and that the Board “shall establish a policy on fees, charges and waivers through rules.” A schedule of application fees and service charges, and the policy on waiver or reduction of such fees, is set out in Appendix D of these rules. The fee schedule in Appendix D is adopted by the TERC Board pursuant to its authority to assess and collect fees, as provided in section 303(a)(6) of the Code, and is subject to change without the need to use the rulemaking process set out in sections 304 and 305(b) of the Code.

PART 5. DOCUMENTATION REQUIREMENTS FOR PERMIT APPLICATIONS

Section 501. Overview of Documentation Requirements

Section 502. Environmental Assessments

Section 503. Categorical Exclusions for Low-Impact Development Permits

Section 504. Pollution Prevention Measures, Best Management Practices, and Best Available Current Technologies

Section 505. Determination of Whether the Impacts May Be Significant

Section 506. Process if an Environmental Impact Statement Is Required

Section 507. Process if a Significant Environmental Impact Report is Required

Section 501. Overview of Documentation Requirements

(a) Application. An application should be prepared using the format prescribed by the TERC Board in Appendix E to these regulations, although an application in a different format will be accepted by the Planning Department if it provides the information specified in Appendix E. (Appendix E is adopted by the TERC Board pursuant to its authority to issue guidelines, as provided in section 303(a)(5) of the Code, and is subject to change without the need to use the rulemaking process set out in sections 304 and 305(b) of the Code.) As a general practice, much of the information required for an application for general development can be incorporated into the environmental assessment (EA).

(b) Environmental Assessment Requirement. For any application for a general development permit, an environmental assessment (EA) as described in Section 502 is required, unless:

- (1) the environmental impacts of the proposed development are adequately addressed (as determined by the Planning Department) in an earlier EA, significant environmental impact report (SEIR), or environmental impact statement (EIS); or
- (2) as provide in section 602 of these Rules, the application qualifies for a low-impact permit but the TERC Board has decided to treat it as a general permit because of the level of community concern rather than because of environmental impacts.

(c) Purposes of an Environmental Assessment. The EA serves the following purposes:

- (1) Determining whether the impacts of the proposed development may be significant and, as such, whether an environmental impact statement (EIS) or significant environmental impact report (SEIR) will be required;
- (2) Determining whether requirements established under any federal environmental laws or regulations, or any tribal laws or regulations (in addition to the Code and these Rules), apply to the development proposed in the application;

- (3) Determining whether the environmental impacts of the proposed development could be avoided or mitigated through pollution prevention measures, best management practices, or best available current technologies that have been endorsed by the TERC (regardless of whether such measures or practices are required by law); and
- (4) Generally helping the TERC, tribal agency staff, the applicant, and interested persons understand the environmental impacts of the proposed development and find ways to mitigate or avoid such impacts.

(d) Categorical Exclusions for Low-Impact Development Permits. As discussed in Section 503, an EA is not required for an application for low-impact development. An application for a low-impact development permit shall use the forms specified by the TERC Board, which shall ensure that sufficient information is available to the Planning Department to determine whether the proposed development qualifies for treatment as low-impact development.

(e) Environmental Impact Statement. Any application for a general development permit for which the applicant is a federal agency, or which requires a permit or other authorization from a federal agency, is subject to compliance with the National Environmental Policy Act (NEPA), which requires the preparation of an environmental impact statement (EIS) for any proposed federal action with significant impacts on the quality of the human environment. As provided in Section 505 of these Rules, if NEPA does apply to a permit application, the TERC Board will normally defer to the judgment of the federal agency with jurisdiction for the determination as to whether an EIS will be required. An applicant may ask the federal agency with jurisdiction for authorization to omit the preparation of an EA and proceed with the development of an EIS. The TERC Board will not object to such a request.

(f) Significant Environmental Impact Report. If the proposed development will result in significant environmental impacts but does not require a federal action, an EIS is not required. Rather, in such a case, these Rules require the preparation of a less-detailed document called a significant environmental impact report (SEIR), in accordance with Section 507 of these Rules. The procedures for determining whether or not the environmental impacts will be significant are set out in Section 505 of these Rules.

Section 502. Environmental Assessments.

(a) EA Form and Content. The EA prepared for an application for a general development permit should follow any guidance that has been issued by the Planning Department and shall include brief discussions of the following:

- (1) a description of the proposed development, which may include a map to show the location and conceptual drawings;
- (2) the purpose or need for the proposed development;
- (3) alternatives to the proposed development, if: (A) the proposed development involves unresolved conflicts regarding the use of resources; or (B) the

proposed development would be located within a designated Area of Special Tribal Concern (unless as provided in Code Section 507, the EA includes an explanation of why alternative locations are not practicable);

- (4) the environmental impacts of the proposed development and alternatives, including the “no action” alternative;
- (5) identification of environmental review and consultation requirements established by tribal or federal law (other than the Code and these Rules) that apply to the proposed development or alternatives considered in the EA, and a discussion of how compliance with any such requirements has been or will be achieved; and
- (6) an appendix of correspondence with federal and tribal agencies and other documentation relating to item (5).

(b) Analysis of Environmental Impacts. The analysis of impacts should be organized in terms of the kinds of resources that may be affected, using categories such as the following:

- (1) land resources;
- (2) water resources;
- (3) air;
- (4) living resources;
- (5) cultural resources;
- (6) socioeconomic conditions;
- (7) resource use patterns;
- (8) other values;
- (9) long range planning; and
- (10) global climate change.

(c) Incorporation by Reference (Tiering). If the environmental impacts of the development proposed in a permit application have been addressed in an earlier EA, EIS, or SEIR, the EA for the permit application may incorporate by reference the relevant portions of the earlier environmental document, as long as the earlier environmental document is readily available. If necessary, the later EA shall include information to bring the information in the earlier environmental document up to date or to correct any inadequacies in the earlier document.

(d) Pollution Prevention Measures, Best Management Practices, and Best Available Current Technologies. If the TERC Board has adopted any pollution prevention (P2) measures, best management practices (BMPs), or best available current technologies (BACT) that are applicable to the kind of development proposed in the application, and if the application states that the project will be developed in accordance with such P2 measures, BMPs, and/or BACT, then the EA need not discuss these impacts in any detail. Rather, the EA can simply note that there will be some impacts (on a particular kind of resource or aspect of the environment) but that these impacts will be mitigated through the use of approved P2 measures, BMPs, and/or BACT. In the event that the applicant or tribal agency staff identifies appropriate P2 measures, BMPs, and/or BACT that have not been adopted by the TERC Board, the Planning Department may

nevertheless determine that the impacts in an EA may be abbreviated if the applicant is committed to adopting such P2 measures, BMPs, and/or BACT.

(e) Filing EA as a Draft. An applicant may file the EA in support of an application as a draft. Even if not labeled “draft,” an EA can nevertheless be revised during the application review process.

(f) Optional Preparation. Tribal agencies and enterprises may prepare an environmental assessment on any action at any time in order to assist in planning and decision-making.

Section 503. Categorical Exclusions for Low-Impact Development Permits

(a) Categories of Low Impact Development. Appendix A is a list of the kinds of development activities that qualify for treatment as low impact development. Any proposed development that qualifies as low impact is treated as a categorical exclusion from the requirement to prepare an EA.

(b) Extraordinary Circumstances. If any of the extraordinary circumstances listed in Appendix B apply to an application for a low-impact development permit, then an EA is required and the application will be processed as general development. The application form for low-impact development includes a checklist that the applicant should complete to determine whether any extraordinary circumstance applies. The Planning Department will review this checklist in making a determination of whether the proposed development qualifies as low-impact. If the Planning Department refers an application to tribal agency staff pursuant to section 402 of these rules, a staff member of a tribal agency may make his/her own assessment of whether any extraordinary circumstance applies and provide a written recommendation to the Planning Department.

Section 504. Pollution Prevention Measures, Best Management Practices, and Best Available Current Technologies.

(a) Adoption or Endorsement of Pollution Prevention Measures, Best Management Practices, and Best Available Current Technologies. The TERC Board may formally adopt pollution prevention (P2) measures, best management practices (BMPs), or best available current technologies (BACT) applicable to certain kinds of development activities. In addition, the TERC Board may endorse P2 measures, BMPs, or BACT that have been adopted by agencies of the federal government, states, or other tribes. Any such formal adoption or endorsement will be recorded in Appendix F of these Rules, and the Planning Department will assist the Board in developing and expanding the content of Appendix F. (Appendix F is adopted by the TERC Board pursuant to its authority to issue guidelines, as provided in section 303(a)(5) of the Code, and is subject to change without the need to use the rulemaking process set out in sections 304 and 305(b) of the Code.) For purposes of these Rules, concepts of pollution prevention, best management practices, and best available current technologies are to be

interpreted broadly. Standards and programs that will prevent or reduce environmental degradation may be endorsed as P2 measures, BMPs, or BACT regardless of whether the federal Environmental Protection Agency classifies them as such.

(b) Voluntary P2 Measures and BMPs. In order to avoid or mitigate the impacts of development, an applicant for a development permit may draw upon P2 measures or BMPs developed by other agencies or entities. The applicant should consult with the Planning Department regarding whether any such P2 measures or BMPs would be appropriate for the kind of development being proposed.

(c) Use of P2 Measures, BMPs, or BACT in an EA. If an applicant incorporates P2 measures, BMPs, and/or BACT into the proposed development, the discussion of impacts in the EA may not need to be very detailed. The applicant should consult with the Planning Department for guidance on the appropriate level of detail in an EA when P2 measures, BMPs, and/or BACT will be used to reduce the severity of impacts.

Section 505. Determination of Whether the Impacts May Be Significant

(a) Legal Effect of “Significant” Impacts. Section 606 of the Code provides that if the TERC Board determines that the EA for an application does not support a conclusion that the proposed development will not result in significant environmental impacts, and if an action by a federal agency (such as the Bureau of Indian Affairs) would be required for such proposed development to be authorized, then a permit cannot be granted until after an environmental impact statement (EIS) has been prepared. The National Environmental Policy Act (NEPA) requires the preparation of an EIS if a project that requires a federal action will result in significant environmental impacts. Under Code Section 606, the applicant can choose to revise the proposed development in order to avoid significant impacts or proceed with the preparation of an EIS. If an EIS is prepared, the TERC Board will not consider the application until the EIS has been completed.

(b) No Federal Action. If the proposed development will result in significant environmental impacts but the proposed development does not require a federal action, section 606 of the Code does not require the preparation of an EIS. In such a case, these Rules require the preparation of a less-detailed document called a significant environmental impact report (SEIR), in accordance with section 507 of these Rules. The procedures set out in this section shall be followed to determine whether or not the environmental impacts will be significant.

(c) Role of Tribal Agency Staff. The Planning Department will seek the assistance of tribal agency staff in reviewing the EA for an application and making a recommendation to the TERC Board for its determination of whether the impacts will be significant. Review by tribal agency staff may be accomplished in a meeting convened by the Planning Department and/or through review of the application by agency staff and filing written comments with the Planning Department. If a federal action subject to

NEPA is required for the proposed development, then the recommendation regarding significance should be coordinated with the relevant federal agency(ies).

(1) *Recommendation for Finding of No Significant Impact.* If the Planning Department recommends a finding that the impacts will not be significant, then the Planning Department will prepare a finding of no significant impact (FONSI) for signature of the TERC Board Chairperson. If the proposed development requires a federal action, the Planning Department will include a signature line in the proposed FONSI for the appropriate federal official. When the Planning Department is ready to present the application to the TERC Board, along with a staff report, the FONSI will be presented to the Board at the same time.

(2) *Agency Staff Objection to FONSI.* Any tribal agency staff member who disagrees with a recommendation for a FONSI may file a written objection to the FONSI, which shall be provided to the Planning Department. When such an objection has been filed, the Planning Department will include the objection with the FONSI when the application is presented to the TERC Board for consideration, and the tribal agency staff member who filed the objection will have an opportunity to make an oral presentation to the TERC Board.

(3) *Federal Agency Objection to FONSI.* If the proposed development requires a federal action, and the federal agency with jurisdiction files a written objection to the FONSI, or otherwise communicates its determination that a FONSI is not supported by the record, the Planning Department will defer to the judgment of the appropriate federal official.

(4) *Finding of Significance.* If the Planning Department finds that the impacts of the development proposed in the application may be significant, the Planning Department will make specific findings as to the nature of the impacts that are considered to be significant and provide these findings to the TERC Board along with a recommendation that the Board should not issue a FONSI for the application. The Planning Department will ensure that the applicant receives written notice of these findings and recommendation. This notice will also include an explanation of the options available to the applicant:

- (A) proceed with the preparation of an EIS;
- (B) if the proposed development does not require a federal action, proceed with the preparation of an SEIR;
- (C) revise the proposal to reduce the impacts below the threshold of significance and re-work the EA accordingly; or
- (D) seek review of the Planning Department's findings by the TERC Board.

(d) Role of the TERC Board. Section 606 of the Code provides that the TERC Board is responsible for determining whether the impacts of the development proposed in the application will be significant. This determination is separate from the decision whether or not to grant a permit. The Board will make determinations of significance through its normal decision-making process, by majority vote. In the consideration of an application for which the Planning Department has recommended a finding of no

significant impact, the TERC Board will make a determination on the record of whether it agrees with the recommendation. If so, the TERC Board will issue a FONSI. When the Board issues a FONSI, it will normally proceed to consider the permit application in the same Board meeting.

(1) *Finding of No Significant Impact without Staff Objection.* If there are no objections from tribal agency staff to the Planning Department's recommendation, consideration by the TERC Board may be limited to a motion to concur in the Planning Department's recommendation with an opportunity for any concerned member of the public to express an objection and, if no objection is raised, a vote on the question.

(2) *Objection to FONSI from Tribal Agency Staff Member.* In the event of a recommended FONSI that is the subject of an objection by tribal agency staff member, the Board will allow for discussion of the objection before deciding whether to issue a FONSI. The objecting staff member will be given the opportunity to explain the objection. The Planning Department will be asked to explain why it was not persuaded by the objection. The Board will also allow for comments from the applicant and from members of the public.

(3) *Federal Agency Objection to FONSI.* If the proposed development requires a federal action, and the federal agency with jurisdiction files a written objection to the FONSI or otherwise communicates its determination that a FONSI is not supported by the record, the Board will defer to the judgment of the appropriate federal official.

(4) *Finding of Significance.* If the Planning Department has recommended that the TERC Board not issue a FONSI because the impacts may be significant, and the Board agrees, the Board's decision will be recorded in a Finding of Significant Impact(s) signed by the Board Chairperson, which shall include the information specified in subsection 507(b). If the applicant chooses to seek review of the Planning Department's recommendation by the TERC Board, the Board will allow for statements from the Planning Department, other tribal agency staff members, the applicant, and other persons before deciding whether or not to agree with the Planning Department's recommendation.

Section 506. Process if an Environmental Impact Statement Is Required

(a) **Use of CEQ Regulations.** Code Section 607 provides that, when an EIS is required, the procedure to be used is found in the regulations issued by the Council on Environmental Quality (40 C.F.R. parts 1500 – 1508). The process shall include, but need not be limited to:

- (1) a scoping process;
- (2) preparation of a draft EIS;
- (3) filing of the draft EIS with the Planning Department and arrangements to make it available to the public;

- (4) a period of at least 45 days for public review and comment;
- (5) preparation of a final EIS, including responses to comments;
- (6) filing of the final EIS with the Planning Department and arrangements to make it available to the public;
- (7) at least a 30-day period after filing in step (6) and a decision by the TERC Board.

(b) Guidance. The CEQ regulations were issued to govern the way that federal agencies comply with NEPA, including the preparation of an EIS when one is required. The TERC Board may issue guidance on the involvement of Tribal agencies in the EIS process. The Planning Department will generally oversee the involvement of Tribal agencies.

(c) Lead Agency. When an EIS is required because the proposed development requires action by a federal agency, the federal agency will generally be required to serve as lead agency or co-lead. The Planning Department will make a recommendation as to which, if any, Tribal Government agency or other entity should consider serving as lead Tribal agency. Accepting the role of lead Tribal agency is voluntary, unless an agency is directed to perform this role by the Tribal Chairperson or Tribal Council. If no agency is willing to serve in this capacity, the matter will be brought to the attention of the Tribal Chairperson who may direct one or more agencies to serve as lead or co-lead. The Planning Department will record the decision of which, if any, agency will serve as lead for the Tribe.

(d) Cooperating Agencies. When an EIS is required, any tribal or federal government agency with jurisdiction over a proposed development, or special expertise, may ask to serve as a cooperating agency. The lead federal agency is generally responsible for acting on such requests. If the Tribal Council directs an agency to ask to be designated a cooperating agency, it shall do so.

(e) State and Local Government Agencies and Agencies of Other Tribes. Agencies of state or local government, or other tribes, may ask to be cooperating agencies.

(f) Decision-Making Process by TERC Board. Any development permit application for which an EIS has been prepared will be considered by the TERC Board using the process for general development permits set out in Section 603 of these Rules.

Section 507. Process if a Significant Environmental Impact Report is Required

(a) Decision to Require a Significant Environmental Impact Report (SEIR). As provided in section 505 of these Rules, the decision that an SEIR is required will normally be made by the TERC Board after receiving a recommendation from the Planning Department. Such a decision will be issued in written form, signed by the TERC Board Chairperson.

(b) Scope of Analysis. The written decision to require an SEIR will identify the impacts that must be analyzed, and will also specify other information that must be included, such as a description of the proposed development. The scope of analysis of impacts need not go beyond the impacts so identified, but may be expanded to help members of the public understand the proposed development.

(c) Lead Agency. The Tribal Chairperson will designate a Tribal Government department or other entity to serve as lead Tribal agency for preparation of the SEIR. This designation will be made after receiving recommendations from the Planning Department, TERC Board and the director(s) of the Tribal department(s) with expertise relevant to the analysis of impacts to be addressed in the SEIR. The Tribal Chairperson may designate two agencies to serve as joint lead agencies. The Planning Department will coordinate discussions among relevant Tribal agencies and will prepare a draft memorandum for signature by the Tribal Chairperson designating the lead agency(ies). This memorandum will specify the responsibilities of each such agency, in addition to responsibilities set out in these Rules.

(d) Cooperating Agencies. Any Tribal department with expertise relevant to the analysis of impacts to be addressed in an SEIR may offer to serve as a cooperating agency. Such a request should be made to the lead agency. The responsibilities of each cooperating agency may be specified in the memorandum signed by the Tribal Chairperson (as provided in paragraph (c) of the section) or in an agreement between the lead agency and the cooperating agency.

(e) Responsibility of Applicant. The applicant is expected to assist in the preparation of an SEIR, including providing funding for studies and/or analyses that may be needed. Specific responsibilities of the applicant will be set out in written form by the lead agency. Required studies and/or analyses may be prepared by a Tribal department with relevant expertise. For any studies and/or analyses prepared by a consulting firm or entity other than the applicant, the lead agency will require such firm or entity to certify that it does not have a financial interest in the ultimate decision as to whether to issue the development permit. The lead agency may authorize the applicant to prepare required studies and/or analyses rather than to provide funding, provided that in such a case the lead agency shall ensure that an independent review is conducted to ensure that it is appropriate for the TERC Board to rely on the information contained in such studies and/or analyses.

(f) Review for Adequacy. Unless otherwise specified in writing by the Tribal Chairperson, the lead agency will be responsible for determining whether the SEIR is adequate for release to the public for review and comment. The lead agency will normally defer to the judgment of a cooperating agency with regard to the analysis of impacts on resources that are within the expertise of the cooperating agency.

(g) Public Review and Comment; Notice. When the SEIR has been determined adequate for release to the public, the Planning Department will publish a notice that the SEIR is available for public review and comment. Prior to publication of the notice, the Planning Department will consult with the TERC Board Chairperson. The notice will be

posted in the Tribal Council building and such other places as the Planning Department or TERC Board Chairperson may determine to be appropriate. The notice shall also be published in *Gamyu* (the newsletter of the Hualapai Tribe) and any local newspaper that the Planning Department or TERC Board Chairperson determines to be appropriate. When an EA has been prepared for the proposed development, the EA will normally be made available to the public along with the SEIR. The notice will include:

- (1) A brief description of the proposed development, including its location;
- (2) A brief description of the environmental impacts that have been determined to be significant;
- (3) A statement on how to obtain a copy of the SEIR (and supporting documentation) for review;
- (4) A statement on how to file written comments and a deadline for filing comments, which shall be no sooner than thirty (30) calendar days from the date of posting the notice in the Tribal Council building; and
- (5) A statement that concerned persons may present oral comments to the TERC Board at a regular or special meeting, including the scheduled date of such a meeting and a statement that the date of such a meeting may change and that any person who wants to present oral comments should contact the Planning Department to make his/her request known and to ensure that he/she receives notice if the date of the meeting is changed.

(h) Responses to Comments. Unless otherwise specified in writing by the Tribal Chairperson, the lead agency will be responsible for preparing responses to relevant and substantive comments on the SEIR. The lead agency will normally defer to the judgment of a cooperating agency with regard to responses to comments relating to impacts on resources that are within the expertise of the cooperating agency. The lead agency may ask the applicant to conduct or provide funding for studies or analyses that may be needed to respond to comments. When the lead agency is satisfied that responses to comments are adequate, the lead agency will deliver a document containing such responses to the Planning Department.

(i) Consideration by TERC Board. The Planning Department will prepare document packages, including the SEIR and the responses to comments, and deliver such packages, along with a revised staff report, to the TERC Board for consideration pursuant to Section 603 of these Rules.

PART 6. DECISION-MAKING PROCESS FOR PERMIT APPLICATIONS

Section 601. Decision-Making Process in General

Section 602. TERC Action on Low-Impact Development Permit Applications

Section 603. TERC Action on General Development Permit Applications

Section 604. Decision-Making Criteria

Section 605. Designated Areas of Special Tribal Concern

Section 606. Authorization of Collaborative Dispute Resolution Processes

Section 607. Issuance of Development Orders; Notice Requirements

Section 601. Decision-Making Process in General

(a) TERC Board Meetings. The TERC makes its decisions in meetings in which a quorum is present and for which notice has been provided as required by the Code or these Rules. The TERC Chairperson presides over meetings, unless the Vice-Chair or an Acting Vice-Chair has been asked to preside. Decisions are generally made after discussion of the matter before the Board, upon motion by a member of the Board and second by another member. Voting is generally done by voice vote, and the vote of each Board member is recorded in the minutes. The Chairperson (or other presiding officer) shall participate in the voting. Decisions are made by a simple majority unless the Code or these Rules provide for a different requirement for a certain kind of decision.

(b) Open Meetings. Meetings of the TERC Board are generally open to the public. The Board may conduct business in closed session if it determines that such a session is necessary to preserve the confidentiality of sensitive information, such as the location of cultural resource sites where disclosure could lead to damage to such sites or interference with traditional cultural activities.

(c) Records. The Planning Department shall ensure that a record is made of each Board meeting, which may be in the form of minutes.

Section 602. TERC Action on Low-Impact Development Permit Applications

(a) Preparation of Permit by Planning Department. As provided in Section 402 of these Rules, the Planning Department considers applications for low-impact development permits. When the Planning Department has determined that the issuance of a low-impact permit is appropriate, the Planning Department will prepare the permit document for signature by the TERC Chairperson.

(b) Action by TERC Chairperson. Under section 601 of the Code, the TERC Chairperson has authority to sign low-impact development permits, and can delegate this authority to any other member of the TERC Board. The TERC regards the issuance of a low-impact development permit for an application that has been approved by the

Planning Department as an action that normally does not require deliberation by the TERC Chairperson (or other Board member to which signature authority has been delegated). However, all low-impact permits are subject to review by the TERC Board as provided in this section.

(c) Notice of Permit Issuance; Effective Date. The Planning Department shall post notice in the Tribal Office no later than two (2) business days after a low-impact permit is signed and, as provided in section 204 of these Rules, no less than five (5) business days prior to the TERC Board meeting at which such a permit may be subject to review. The notice shall include the statements specified in section 402(f) of these Rules. A copy of the notice will be posted at the location of the activity authorized by the permit, and the Planning Department will make a good faith effort to mail a copy to each person who has a leasehold interest in any parcel of trust land adjacent to the parcel that is the subject of the permit.

(d) Objection or Request for Review. A written objection to the issuance of a low-impact permit may be filed with the Planning Department within the time frame specified in paragraph (c) of this section and in section 402(f). A TERC Board member may file a request for review within the same deadline; a request for review does not necessarily mean that the Board member objects to treating the permit application as low-impact, but, rather, only that the Board member thinks that the permit application warrants closer scrutiny. The Planning Department will include the objection or request for review on the agenda for the next Board meeting, and will provide notice to the applicant and the person who filed the objection. If the next Board meeting is sooner than five (5) business days from the receipt of the objection or request for review by the Planning Department, the objection or request for review shall be considered at the following Board meeting.

(e) Meeting with Staff. Planning Department staff will make a good faith effort to arrange an informal meeting with the person(s) filing an objection and/or TERC Board member(s) filing a request for review to seek clarification of concerns with the application, in preparation for consideration by the TERC Board. There is no notice requirement for such a meeting, although Planning Department staff will invite the permit applicant to attend any such meeting and will make a good faith effort in scheduling such a meeting so that it is possible for the applicant to attend. If it is apparent from the written objection or request for review that the concerns raised are within the jurisdiction or expertise of a Tribal government agency, Planning Department staff will invite the relevant Tribal government agency to have a staff member attend the meeting.

(f) Resolution of Objection or Request for Review by the Board. If an objection to a particular permit application is filed with the Planning Department within the specified deadline, the objection will be discussed in a TERC Board meeting. The Board will allow opportunities for oral statements by the person raising the objection, the applicant, Planning Department, staff of other tribal agencies, and other interested persons. If a request for review has been filed rather than an objection, the Board will allow for such discussion as may be warranted. The Board will make its decision in the Board meeting, and a written decision will be issued within one business day. The Board

may decide that the original decision to issue a low-impact permit was correct. In the alternative, the Board may determine that it is not appropriate to issue a low-impact permit for the proposed development and that the application will be treated as one for general development. A decision to treat the application as general development must be supported by a finding that:

- (1) the proposed development does not qualify as low-impact;
- (2) even though the proposed development appears to qualify as low-impact development, one or more of the extraordinary circumstances identified in Appendix B applies, and, as such, the application must be treated as general development; or
- (3) even though the proposed development does qualify as low-impact, the level of community concern about the development warrants treating it as general development.

(g) Environmental Assessment Requirement. If the TERC Board decides to treat the application as general development because it does not qualify as low-impact or because an extraordinary circumstance applies, an environmental assessment will be required before the Board will take action on the permit application. If the Board decides to treat the application as general development because the level of community concern rather than because of environmental impacts, then, as provided in section 501(b) of these Rules, an environmental assessment will not be required. Rather, in such a case, the Board will request the Planning Department to prepare a staff report that summarizes the issue(s) of concern, and to provide such report to the Board for consideration at a subsequent Board meeting. The Planning Department will include in the staff report any written comments that may be submitted by the applicant or any other person, provided that such comments are received at least five (5) business days before the Board meeting at which the application is scheduled for consideration.

(h) Effective Date. Each low-impact permit shall state that it will not take effect until the TERC Board has had an opportunity for review as provided in this section. If the Board determines that treatment as low-impact is proper, the date on which a permit will take effect will be:

- (1) If no objection or request for review is filed with respect to a permit, it will take effect on the next business day after the deadline for filing an objection or request for review;
- (2) If a permit is reviewed in a TERC Board meeting and is confirmed by the Board, it will take effect on the second business day after the date that the Board's written decision is issued.

(h) Judicial Review. As provided in section 707 of the Code, any person aggrieved by the issuance or denial of the permit may file a complaint in tribal court seeking judicial review. A decision to treat an application as one for general development, rather than low-impact development, does not constitute the issuance or denial of a permit application and, as such, is not subject to judicial review.

Section 603. TERC Action on General Development Permit Applications

(a) Filing of Planning Department's Staff Report. The Planning Department will file the staff report in the official docket of the application, will record the entry in the logbook, and will provide a copy of the report to each member of the TERC Board.

(b) Schedule for Consideration; Notice. The Planning Department will schedule the permit application for consideration at the next regular meeting of the TERC Board, *provided* that consideration at that meeting will allow for compliance with the notice requirement in this Section. Notice shall be provided to the applicant and to interested persons who have requested notice, and shall be posted in the Tribal Office, at least five (5) business days before the meeting. If the time until the next meeting is not adequate to meet this notice requirement, the application shall be scheduled for the following regular meeting. If more than one application is scheduled for consideration at any given Board meeting, the Planning Department will prepare an agenda, which shall be made public no later than three (3) business days before the meeting, specifying the order in which permit applications will be considered and providing approximate times at which the consideration of each permit application will begin.

(c) Consideration by TERC Board. Consideration of an application in a TERC Board meeting fulfills the requirement of the Section 602 of the Code that the Board provide an informal hearing for each applicant for a general development permit. The consideration of an application in a Board meeting shall include at least the following:

- (1) a presentation by the Planning Department summarizing the Staff Report, and specifically mentioning each of the items required by Section 403 of these Rules to be included in the staff report;
- (2) a presentation by the applicant, describing the proposed development and explaining how it would be consistent with the Tribe's Land Use and Development Plan and describing measures taken to ensure compliance with any applicable environmental review and consultation requirements established by tribal or federal law;
- (3) an opportunity for any interested member of the Tribal Council or any official or employee of a Tribal Government department, agency or other entity to express views or concerns regarding the application;
- (4) an opportunity for any interested member of the public or representative of any government agency, private business, or non-governmental organization to express views or concerns regarding the application; and
- (5) opportunities for members of the Board to ask questions of any person making a statement, which may include asking questions of the applicant, the Planning Department, or tribal agency staff members to follow up on issues raised by other speakers.

(d) Deliberation by TERC Board. After the conclusion of presentations and responses to questioning by the TERC Board, the Board members shall engage in deliberations regarding the permit application. The Board will normally reach a decision

in open meeting to: grant the permit, deny the permit, or grant it subject to conditions. Alternatively the Board may decide to deliberate on the application further in a closed session. If the Board decides on further deliberation in a closed session, the Board may immediately proceed to hold a closed session, or it may proceed to discuss other matters on the agenda for the Board meeting before entering into a closed session. In the event that the Board does not have sufficient time to finish its deliberations of all permit applications, the Board may recess and reconvene its closed session at a convenient time within the next two (2) business days. The Planning Department shall be present during any closed session and shall make a record of the deliberations, which may be in the form of minutes.

(e) Decisions by the TERC Board. All decisions by the TERC Board on permit applications shall be in the form of Development Orders, as described in Section 607 of these Rules. A Development Order shall be prepared by the Planning Department and issued by the TERC Chairperson within two business days after a decision is reached. If the Board's decision is to grant the permit, the Development Order shall state that the permit is granted subject to approval by the Tribal Council. A permit for general development shall not take effect until it has been approved by the Tribal Council.

(f) Tabling an Application. The Board, on its own motion or in response to a request from the applicant or any person participating in the Board meeting, may decline to reach a decision on a permit application and, instead, table consideration of the application until the next Board meeting, upon a finding that doing so would produce a more fully informed decision. No application may be tabled more than one time.

(g) Reconsideration; Waiting Period to File Revised Application. If a permit is denied, an applicant may revise the application in response to the Board's decision and file a new application. A new application may be filed no sooner than six months after the date of the Development Order issued pursuant to section 607 of these rules denying the permit, provided, however, that if the Development Order advises the applicant that the Board would reconsider the application if certain changes were made and specifies a date sooner than six months when a revised application may be filed, the date in the Development Order will control.

(h) Judicial Review. As provided in paragraph (e) of this section, a general development permit issued by the TERC Board does not authorize any development until the permit is approved by the Tribal Council. Section 707 of the Code authorizes judicial review in Tribal Court of permit decisions by the TERC Board; the Code does not authorize judicial review of decisions by the Tribal Council. Accordingly, the TERC Board regards its decision on each general development permit as final agency action subject to judicial review, despite the fact that a general development permit is not final until approved by the Tribal Council. Persons wanting to challenge a permit decision by the TERC Board on factual or procedural grounds are advised to consider filing for judicial review before the permit at issue is considered by the Tribal Council as allowed by section 709 of these Rules.

Section 604. Decision-Making Criteria

When the TERC Board decides to approve an application for a general development permit, the Board must make the following determinations:

- (a) The proposed development is consistent with the Tribe's Land Use and Development Plan;
- (b) The environmental documentation adequately discusses the environmental impacts of the proposed development and any alternatives considered pursuant to these Rules, and more specifically:
 - (1) The EA adequately discusses the environmental impacts of the proposed development and any alternatives that were considered, or, if the environmental impacts are not fully discussed in the EA, either an EIS or an SEIR was prepared and the EA is tiered to such EIS or SEIR; or
 - (2) If an EA was not prepared, either:
 - (A) the environmental impacts are adequately discussed in an earlier environmental document or in an EIS or SEIR that was prepared without first preparing an EA; or
 - (B) an EA was not required because the permit application qualifies for treatment as low-impact but the TERC Board decided to treat it as general development because of the level of community concern rather than because of environmental impacts;
 - (3) If an EIS was prepared, the lead federal agency has determined that the EIS is adequate and has released it to the public as a final EIS; or
 - (4) If an SEIR was prepared, all applicable requirements of these rules have been met, including adequate analysis of any significant environmental impact(s) and responses to relevant and substantive comments on the SEIR;
- (c) All applicable environmental review and consultation requirements established by tribal and federal law have been identified and compliance has been achieved, or the Board is satisfied with enforceable assurances that have been given regarding compliance after the permit is issued;
- (d) Conditions can be included in the permit to adequately mitigate any adverse environmental impacts that may result from the development; and
- (e) The development will be conducted in accordance with any applicable pollution prevention measures or best management practices.

Section 605. Designated Areas of Special Tribal Concern

(a) Designation. Section 404 of the Code provides that the Tribal Land Use and Development Plan may include the designation of Areas of Special Tribal Concern in

order to provide added protection for important tribal interests, including but not limited to religious and cultural practices, wildlife habitat, and sources of water supply.

(b) Alternatives. Section 507 of the Code requires that the EA for a permit for development within an Area of Special Tribal Concern must include a discussion of alternative locations or an explanation of why alternative locations are not practicable.

(c) Determination of Consistency with Land Use and Development Plan. The TERC Board shall not decide to authorize a permit for development within an Area of Special Tribal Concern unless it determines that the proposed development would be consistent with the Tribal Land Use and Development Plan.

(d) Ultimate Decision by Tribal Council. Section 604 of the Code provides that a permit application for development within an Area of Special Tribal Concern must be presented to the Tribal Council for the ultimate resolution. The TERC shall not present such an application to the Council unless it has first determined that the development would be consistent with the Tribal Land Use and Development Plan. Even if the TERC Board has made such a determination, the Council may still decide that a permit will not be issued, after holding a meeting in which members of the TERC Board and members of the Council have the opportunity to present their views on the proposed development. Notice of the Council meeting shall be posted, although portions of the meeting may be closed to the public if necessary to preserve the confidentiality of information relating to the Area of Special Tribal Concern.

Section 606. Authorization of Collaborative Dispute Resolution Processes

(a) Appointment of Facilitator. In any general development permit application that comes before the TERC Board, if the proposed development is the subject of disagreement over whether the permit should be granted or, if granted, the nature of conditions that should be imposed, and the Board believes that the disagreement lends itself to possible resolution through the use of a facilitated collaborative process, the Board may decide to appoint a facilitator and suspend consideration of the application. In such a case, the decision to do so will be recorded in a development order pursuant to section 607 of these Rules.

(b) Role of Tribal Agency Staff. Whenever such a collaborative process is convened, it shall include at least one meeting with staff of appropriate tribal agencies, in order to draw upon the expertise of the staff of such agencies.

(c) Board Action based on a Collaborative Process. After the facilitator has convened a process among the applicant and other interested persons and entities (which may include governmental agencies), the facilitator will keep the Planning Department informed regarding progress toward the resolution of the dispute. If a resolution is fashioned that is acceptable to all persons and entities participating in the process, the matter will be brought back to the TERC Board for a decision, using the standard process for general development permits. If the collaborative process does not result in a

resolution, then the applicant retains the option of asking the Planning Department to schedule the original application for consideration by the TERC Board.

Section 607. Issuance of Development Orders; Notice Requirements

(a) Content of Order. Section 605 of the Code provides that any decision of the TERC Board to issue a permit (whether for general or low impact development), to deny an application for a permit, or to issue a permit subject to conditions, shall be recorded in a brief document known as a development order. Each development order is required to include:

- (1) a brief statement of reasons in support of the Board's decision;
- (2) an explanation of the procedure for appealing the decision (in accordance with section 602 of these Rules for low-impact permits and in accordance with section 603 for general permits);
- (3) if the decision is to issue the permit, the date on which the permit becomes effective (which, for a general development permit, shall not occur prior to action by the Tribal Council);
- (4) the terms of any conditions that apply to the permit, if the Board's decision is to issue the permit is subject to such conditions;
- (5) if the decision is to deny the permit, advice to the applicant on whether the Board would reconsider the application if certain changes were made; and
- (6) a statement that failure to comply with the order may be grounds for enforcement and penalties.

(b) Order to Conduct Reconsideration. A decision by the TERC Board to reconsider an application for general development pursuant to Section 603(g) of these Rules shall also be recorded in a development order. If the order does not specify an earlier date, an application for reconsideration may be filed no sooner than six months after the Order for Reconsideration is issued.

(c) Order to Convene a Collaborative Dispute Resolution Process. A decision by the TERC Board to convene a collaborative dispute resolution process using a facilitator, as provided in Section 606 of these Rules, shall be recorded in a development order. Such an order will contain the basic mandate of the facilitator in convening a collaborative process. The appointment of a facilitator and more elaborate directions for conducting the process may be issued separately by the TERC Chairperson.

(d) Notice. The Planning Department will post notice of all Development Orders issued by the Board and shall ensure that the applicant receives an official copy. The Planning Department will provide members of the Tribal Council with notice of all

Development Orders issued by the Board, and will make copies of any such order available on request. Written notice of all general development permits will also be provided to the primary occupant of any building within 300 feet of the parcel of land to which the Order applies.

(e) Time Limits for Issuance. Development orders shall be issued expeditiously and, in any case, within the following time limits:

(1) *General development permits.* As provided in Section 603(e) of these Rules, a development order relating to a general development permit shall be issued within no more than two (2) business days after the decision is made, provided that any general development permit shall not take effect until it has been approved by the Tribal Council. For any permit application that was tabled in a Board meeting, the decision on the application will be made at the next Board meeting, unless the Board determines that an environmental impact statement or significant environmental impact report will be required.

(2) *Low-impact development permits.* As provided in section 602 of these Rules, a low impact permit will be issued when the Chairperson determines that the application qualifies for treatment as such. Any such permit is subject to review by the TERC Board as provided in that section.

PART 7. MONITORING AND ENFORCEMENT

Section 701. Monitoring and Investigations

Section 702. Notice of Violation; Summons; Civil Forfeiture

Section 703. Administrative Enforcement

Section 704. Administrative Penalties

Section 705. Suspension and Revocation of Permits

Section 706. Violations by Tribal Government Agencies

Section 707. Emergency Orders

Section 708. Judicial Enforcement

Section 709. Judicial Review of TERC Board Decisions

Section 701. Monitoring and Investigations

(a) Monitoring. The Planning Department will make arrangements for monitoring each permit issued for compliance with the terms and conditions included in the permit. Monitoring may include site visits by Planning Department Staff and/or other tribal employees of departments or agencies with expertise relating to one or more conditions included in the permit. A site investigation may be conducted in response to information brought to the attention of the Planning Department by any person.

(b) Letter of Inquiry. As part of an investigation, the Planning Department may serve any person with a letter of inquiry. Any such letter will inform the person to whom it is addressed that: (1) written response to all questions in the letter must be provided to the Planning Department within thirty (30) days; (2) failure to respond will be treated as a violation of the Code; (3) providing false information will be considered a violation of the Code; and (4) any violation of the Code may result in the assessment of civil penalties.

Section 702. Notice of Violation; Summons; Civil Forfeiture

(a) Preparation. If the Planning Department has reason to believe that a violation of the Code has occurred or that there is a substantial likelihood that a violation will occur in the near future, the Planning Department will prepare a Notice of Violation and Summons to Appear and bring the matter to the attention of the TERC Chairperson, or to the Vice-Chair if the Chairperson is not available. The Notice of Violation will be addressed to the person(s) believed to be responsible for the apparent violation and will include a summary of the alleged violation(s). The Notice of Violation shall briefly state the nature of the alleged violation. The allegation(s) will be supported by a Declaration signed by the Director of Planning summarizing the information on which the allegation is based and note the source of the information, which may include monitoring site visit(s), the response to a letter of inquiry, or information provided by a Tribal Government employee, and/or a member of the public. The Summons will state a specific time, date and place for a TERC Board meeting at which the alleged violator(s) shall appear. The Summons shall advise the alleged violator that failure to appear may

result in the imposition of penalties. In any situation in which an alleged violation has occurred (or is believed likely to occur) on property owned by a person other than the alleged violator, section 702 of the Code provides that the Notice of Violation will also be served on the landowner. Where the alleged violation occurs on tribal trust land, the term “landowner” is hereby interpreted to include any person who has a leasehold interest in the land or other lawful permission to use it.

(b) **Issuance.** Either the TERC Chairperson or TERC Vice-Chair is authorized to sign a Notice of Violation and Summons to Appear, and the TERC Board hereby delegates its authority to issue such documents, pursuant to Code Sections 303(b) and 702. The Chairperson will generally exercise this authority, with the Vice-Chair so authorized if the Chairperson is not available.

(c) **Service.** The Notice of Violation and Summons may be personally served on the alleged violator(s) by the Planning Department. If the person responsible for the alleged violation is not present on the site, the notice shall be prominently posted on the site and a reasonable effort will be made to provide service by certified mail. On request of the Planning Department, any Tribal Government law enforcement officer may serve the Notice and Summons.

(d) **Civil Forfeiture.** In the event of a violation of the Code or these rules in which land disturbance has taken place or appears likely to occur in the immediate future, then, pursuant to section 708 of the Code, tribal law enforcement officers may seize heavy equipment, motor vehicles, and other items of personal property involved in the violation. Carrying out land disturbance activities subject to these rules without a permit, or carrying out such activities without complying with conditions stated in a permit, is evidence of a violation that may warrant seizure of such items of personal property. The issuance of a Notice of Violation pursuant to this section of the rules is evidence of a violation that may warrant seizure of personal property if the violation continues after the Notice of Violation has been served. Civil forfeiture is a law enforcement measure that is conducted by tribal police and the Tribal Court, rather than the Planning Department and the TERC Board; the Planning Department and the TERC Board, however, may ask tribal police to carry out civil forfeiture.

Section 703. Administrative Enforcement

(a) **Enforcement Hearings.** For any situation in which a Notice of Violation has been served, the TERC Board shall conduct an enforcement hearing to hear testimony regarding the alleged violation. The hearing may be conducted at either a regular meeting or a special meeting. The Summons served with the Notice of Violation will specify the time, date, and place of the TERC Board meeting at which the hearing will be conducted, which shall be no less than five (5) business days from the date of the Notice. As provided in section 702(a) of these rules, the Notice of Violation shall briefly state the nature of the alleged violation, and shall include a copy of the Planning Department’s Declaration; the Summons shall advise the alleged violator that failure to appear may result in the imposition of penalties. The Summons will also explain the process for

requesting a continuance, as described in paragraph (i) of this Section. Notice of the hearing shall also be posted in the Tribal Office at least five (5) business days before the hearing.

(b) Procedures for Enforcement Hearings. In an enforcement hearing, the TERC Board will seek to determine the facts regarding the allegations made in a Notice of Violation. The following procedures will be observed, whether the hearing is conducted by the Board, or by a Hearing Officer appointed pursuant to paragraph (e) of this Section:

- (1) The Board will allow for oral presentations from the Planning Department, the person(s) charged with the alleged violation(s), and from other interested persons, including staff of tribal government agencies. Any person may be represented by legal counsel, at that person's own expense.
- (2) The first oral statement will be from the Planning Department, which may include recommendations for corrective actions and/or administrative penalties; this will be followed by statement(s) from the person(s) charged with the violation(s); the order of other statements shall be as determined by the Board in its discretion.
- (3) Any person making an oral statement may also submit a written statement and/or photographic or other documentary evidence.
- (4) Any person making a statement may be questioned by members of the TERC Board. Cross-examination of witnesses generally will not be allowed, but may be in exceptional circumstances in the discretion of the Board. The Board may call back any person who has made a statement and ask for responses to questions that occur to any Board member as a result of statements made by other persons.
- (5) After all persons wishing to do so have made their oral statements, and the Board has conducted its questioning, all persons who have made statements will be given the opportunity to make closing statements.
- (6) The Board may make a decision on the allegations in open meeting immediately after the opportunity for closing statements, or the Board may engage in deliberations in a closed session before making a decision.
- (7) Any decision by the Board finding that a violation has occurred can be made a vote of a majority of the Board members in a meeting at which a quorum is present.

(c) Record of Hearing. The Planning Department shall ensure that a record is made of the proceedings of any enforcement hearing.

(d) Burden of Proof. The Planning Department bears the burden of proving that a violation of the Code has occurred and that the person(s) charged is (are) responsible for causing the violation. For the Board to determine that a violation has occurred, section 305(c) of the Code provides that the Board must find that a preponderance of the evidence supports such a determination and that the evidence supporting the determination is substantial.

(e) Hearing Officer. The TERC Chairperson may appoint the Board's legal counsel or another tribal attorney or other individual with legal training to serve as a Hearing Officer for the purpose of presiding over an enforcement hearing. If so appointed, such a Hearing Officer will carry out the role of the Board as set out in paragraph (b) of this Section, provided that a quorum of members of the Board must be present at the meeting in which the hearing takes place. The Hearing Officer will prepare a recommended decision that will be presented to the Board for consideration at a Board meeting. The Hearing Officer's recommended decision will be provided to the planning Department in a timely manner so that the Board can act on it within 30 calendar days after the date of the hearing as required by section 703(a) of the Code; the recommended decision will be provided to the Board members no less than five (5) business days prior to the Board meeting at which it is scheduled for consideration.

(f) Corrective Actions and Administrative Penalties. The Planning Department, in such consultation with the staff of other tribal agencies as may be appropriate in the circumstances of the particular alleged violation, may formulate recommendations for:

- (1) corrective actions to rectify the adverse impacts on the environment, and impacts on natural and cultural resources, resulting from the alleged violation(s); and
- (2) administrative penalties in accordance with the factors set out in Section 704 of these Rules.

(g) Enforcement Orders. The decision of the Board on the allegations in a Notice of Violation after conducting an enforcement hearing shall be recorded in an Enforcement Order. All such Orders shall be issued no later than thirty (30) calendar days after the enforcement hearing. If the Board determines that a violation has not occurred, the Order shall so state. If the Board determines that a violation has occurred, the Order shall:

- (1) specify the nature of the violation;
- (2) state that the Board's determination is supported by a preponderance of the evidence and that the evidence is substantial, with a brief summary of the evidence in support of the determination;
- (3) direct the violator to immediately cease the unlawful activity (if the activity has not already ceased);
- (4) direct the violator to take correction actions to rectify adverse impacts on the environment, and impacts on natural and cultural resources;
- (5) assess administrative penalties in accordance with Section 704 of these Rules, which may include an assessment for the cost of corrective measures taken by a Tribal Government agency;
- (6) inform the violator as to whether the Board has decided, in accordance with Section 705 of these Rules, to suspend or revoke a permit that was previously issued to the violator.

(h) Petition for Relief. A person who is the subject of an Enforcement Order that has been issued by the Board which includes a civil penalty may file a Petition for Relief

with the Planning Department. The person filing such a Petition may request that no penalty be imposed or that the penalty amount be reduced. The Petition shall include reasons in support of the request. Any such Petition must be filed within forty-five (45) calendar days of the date on which the Enforcement Order was issued (or from the date that the penalty amount was proposed, if later). If a Petition has been filed, the person against whom the Enforcement Order has been issued is not obligated to pay the administrative penalties until the Board has acted on the Petition in a Board meeting. The Board's decision in response to a Petition for Relief shall be recorded in an Amended Enforcement Order.

(i) Amended Enforcement Order. The Board may issue an Amended Enforcement Order in response to actions taken in response to the initial Order, which may include either an increase or a reduction in the amount of administrative penalties assessed to reflect such factors as compliance by the violator or non-compliance (which may result in the costs of a Tribal Government agency taking corrective action). An Amended Order may also reinstate a suspended permit or convert a suspended permit into a revoked permit. The Board may issue an Amended Enforcement Order based on a decision made in a regular or special meeting, without need for holding an additional enforcement hearing.

(j) Continuance during Negotiations. After having been served with a Notice of Violation, the alleged violator may file a request for a continuance in order to engage in negotiations with the Planning Department and staff of other tribal agencies regarding corrective actions and administrative penalties. The Planning Department is hereby delegated authority to grant such a continuance. A request for a continuance will be routinely granted, and may be granted at any time before the convening of the scheduled enforcement hearing. Notice that a continuance has been granted shall be posted in the Tribal Office. If the Planning Department determines that negotiations are not likely to result in an agreement on corrective actions and/or administrative penalties, the Planning Department shall schedule the matter for an enforcement hearing. Notice of a decision to terminate negotiations and proceed to hold a hearing shall be given no less than five (5) business days before the hearing.

Section 704. Administrative Penalties

(a) Authority. Section 703(b) of the Code authorizes the Board to impose administrative penalties in accordance with a schedule of penalties prescribed in the Commission's rules, or to impose penalties upon a violator who has been ordered in an Enforcement Order to take corrective action and who has not take such action within the prescribed time frame. This section of the rules is the "schedule of penalties" authorized in the Code.

(b) Penalty Amount Factors. The following factors shall be used in determining the amount of any penalty. The Planning Department will formulate recommendations for the Board's consideration.

- (1) *Development Without a Permit.* For a violation of the Code by conducting development activity that is subject to the requirement to obtain a permit (and not exempted under these rules), the amount of an administrative penalty for a first offense shall be twice the amount of the permit application fee, plus any additional amounts determined pursuant to subsections (b)(2), (b)(3), and (c) of this section.
- (2) *Restoration and Repair.* For any damage to the environment or to natural or cultural resources, the penalty amount will include the cost of restoration and repair, which shall be determined with assistance from tribal agencies with jurisdiction or special expertise.
- (3) *Irreparable Loss of Value.* In the event of irreparable damage to the environment or to natural or cultural resources, the penalty amount will include an amount to reflect the value of the lost resource(s), which shall be determined with assistance from tribal agencies with jurisdiction or special expertise, and may include, but need not be limited to, commercial value, ecological services value, and cultural value. Recommendations from tribal agency staff relating to this factor may state that the loss is difficult or impossible to quantify; in such cases tribal agency staff should also offer an assessment of the severity of the loss.

(c) Aggravating Factors. If any of the following aggravating factors apply, the amount of the penalty shall be increased accordingly.

- (1) *Activity that Continues After a Notice of Violation.* If the Board finds that the violator continued to engage in the prohibited conduct after receiving a Notice of Violation, the total amount of the penalty will be doubled.
- (2) *Failure to Take Corrective Action as Ordered.* If the violator has been ordered to take corrective action and has not done so within the time specified in an Enforcement order, and a tribal department or agency has carried out the corrective action, then the penalty amount will be increased by twice the amount of the costs incurred by the tribal department or agency in carrying out the corrective action.
- (3) *Subsequent Offenses.* For any person on whom a penalty has previously been imposed, the total amount of the penalty will be doubled. If both factor (c)(1) and this factor ((c)(3)) apply, then the amount of the penalty will be quadrupled.

(d) Mitigating Factors. In its discretion, the Board may reduce the amount of an administrative penalty upon a finding that one or more of the following factors apply:

- (1) *Compliance with Enforcement Order.* The violator has complied with the terms of an Enforcement Order in a timely manner.

(2) *No Substantial Harm.* The violation did not result in substantial harm to the environment or to natural or cultural resources.

(e) **Waiver.** In its discretion, the Board by decide to waive the collection of a penalty that has been imposed if one of the mitigating factors in subsection (d) of this section applies. Any such waiver will be recorded in an Amended Enforcement Order.

Section 705. Suspension and Revocation of Permits

(a) **Suspension.** An Enforcement Order may suspend a development permit for failure to comply with the Code, including failure to comply with terms or conditions included in the permit. If the Order does suspend a permit, it will inform the violator that activity previously authorized by the permit is no longer lawful unless expressly authorized by the Enforcement Order. The Order will also inform the permit holder regarding conditions that must be fulfilled before the Board will consider reinstating the permit. The Order will set a time frame for fulfillment of such conditions, and will inform the permit holder regarding the procedures to be followed in seeking reinstatement and will put the permit holder on notice that failure to fulfill the conditions will result in revocation of the permit.

(b) **Reinstatement.** If, in a regular or special meeting, the Board finds that the conditions for reinstatement have been met, the Board will issue an Amended Enforcement Order reinstating the permit, subject to such conditions that it determines to be warranted in the circumstances.

(c) **Revocation.** If, in a regular or special meeting, the Board finds that the conditions for reinstatement have not been met within the prescribed time frame, the Board will issue an Amended Enforcement Order revoking the permit.

(d) **Hearing Not Required.** As provided in Section 703(h) of these Rules, an additional enforcement hearing is not required for the reinstatement or revocation of a permit.

Section 706. Violations by Tribal Government Agencies

(a) **Investigations by Planning Department.** In any case in which an investigation by the Planning Department yields information that a Tribal Government agency or department appears to have violated the Code or these Rules, the Planning Department will bring the matter to the attention of the Board Chairperson. The Planning Department will prepare a brief staff report for the Board Chairperson describing the alleged violation and noting whether it involves a violation of the terms and conditions of a permit or the carrying out of an activity requiring a permit under the Code without first obtaining such a permit. A copy of the staff report will be provided to the Director of the Tribal Government agency or department, instead of a Notice of Violation.

(b) Informal Intervention by Tribal Chairperson. In any case in which the TERC Board becomes aware of an alleged violation of the Code by an agency or department, including a matter brought to the attention of the Board Chairperson in accordance with paragraph (a) of this Section, the Board Chairperson shall bring the matter to the attention of the Tribal Chairperson. The Tribal Chairperson may convene a meeting of the appropriate tribal employees and the Board Chairperson and seek to achieve a resolution of the matter in a way that achieves compliance with the Code.

(c) Fact-Finding Enforcement Hearings. If informal intervention by the Tribal Chairperson does not lead to an acceptable resolution, the TERC Board shall conduct an enforcement hearing for the purpose of making factual determinations. The hearing shall be conducted in accordance with the procedures set out in Section 703 of these Rules, except that, instead of an Enforcement Order, the TERC Board will issue a decision setting out findings of fact and recommendations for corrective actions. The Board's decision may include a recommendation that the Tribal Council, by resolution, direct the offending Tribal agency or department to carry out recommended corrective actions. The Board's decision may include a recommendation that the Tribal Council authorize the TERC Board to file an action in Tribal Court pursuant to Section 708 of these Rules.

Section 707. Emergency Orders

(a) Imminent and Substantial Threat. Code Section 704 provides that if the TERC Board determines that conduct by any person that is in apparent noncompliance with the Code is presenting an imminent and substantial threat to the public health or welfare, or to the Tribe's environment or cultural resources, and if the Board determines that administrative or judicial enforcement would not be practicable to assure a prompt response to the threat, the Board may issue emergency orders.

(b) Emergency Board Meeting. Any matter that gives rise to the Board considering the issuance of an emergency order shall be the subject of an emergency Board meeting called by the TERC Chairperson or Vice-Chair. There is no notice requirement for such a meeting, although if such a meeting is held, notice of the time, date and place will be posted in the Tribal Office (even if the notice is posted as the meeting is convened). Any such meeting will generally be open to the public, although the Board may decide to hold a closed session. Before issuing an emergency order the Board will consult with its legal counsel or another tribal attorney, and such consultation may take place in a closed session.

(c) Emergency Orders. During an emergency meeting at which a quorum is present, the Board may decide to issue such an order as it determines to be necessary to protect the public health, welfare, environment, or cultural resources. Any such order shall be effective immediately and shall remain in effect as specified in the order, but not longer than sixty (60) calendar days.

Section 708. Judicial Enforcement

(a) Action in Tribal Court. As provided in Code Section 705, if authorized by the Tribal Council, the TERC Board may file an action in Tribal Court seeking injunctive relief and other relief authorized by law (including the assessment of civil penalties). If the TERC Board determines that such an action is warranted, it will ask the Tribal Council for the necessary authorization. In such a case, the Board's legal counsel or another tribal attorney will represent the TERC Board, which will be the named plaintiff. If the defendant in such an action is a tribal agency or department, judicial relief against such agency or department shall be limited to injunctive relief.

(b) Instances for which Judicial Enforcement May Be Warranted. The TERC Board may seek authorization to file an action in Tribal Court if:

- (1) the Board has determined, after an enforcement hearing, that a person has committed a violation of the Code or these Rules (including providing false information in an application or in response to a letter of inquiry), or a violation of any permit or order issued by the Board; or
- (2) the Board has determined that a person's conduct is creating an imminent and substantial endangerment to the public health or welfare or to the Tribe's environment or cultural resources.

Section 709. Judicial Review of TERC Board Decisions

(a) Statutory Right of Judicial Review. Code Section 707 provides that any person "who is aggrieved by the issuance or denial of a development permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal in the Tribal Court of Appeals, in accordance with the rules of the Court."

(b) Judicial Review prior to Decision by the Tribal Council. As provided in section 603(e) of these Rules, a general development permit issued by the TERC Board does not authorize any development until the permit is approved by the Tribal Council. Section 707 of the Code authorizes judicial review in Tribal Court of permit decisions by the TERC Board; the Code does not authorize judicial review of decisions by the Tribal Council. Accordingly, the TERC Board regards its decision on each general development permit as final agency action subject to judicial review, despite the fact that a general development permit is not final until approved by the Tribal Council. Persons wanting to challenge a permit decision by the TERC Board on factual or procedural grounds are advised to consider filing for judicial review before the permit at issue is considered by the Tribal Council. In the case of any permit decision in which a person files a Notice of Intent to Appeal with the Planning Department within ten (10) business days after the permit decision at issue, the Planning Department will inform the Tribal Council that an appeal is pending in Tribal Court. If an appeal is not filed in Tribal Court within thirty (30) calendar days after the permit decision at issue, the Planning Department will so inform the Tribal Council.

(c) Additional Rights to Judicial Review. In addition to those persons specified in Code Section 707, any person who has participated in an enforcement hearing by making an oral statement and/or filing documentary evidence, and who is aggrieved by the Board's decision in such case, may file an action in Tribal Court.

APPENDIX A: LOW-IMPACT DEVELOPMENT

Activities that are included in this Appendix have been determined by the Board of the Tribal Environmental Review Commission (TERC) to be eligible for permits as low-impact development. Individual proposals must be reviewed by Planning Department staff to determine whether any of the extraordinary circumstances set out in Appendix B apply. If an extraordinary circumstance does apply, then the proposal does not qualify for treatment as low-impact development. In addition to this list of low-impact development activities, Appendix C lists kinds of activities that are exempt from the TERC permit process. If it is not clear whether a proposed activity is low-impact development under Appendix A or exempt from the permit process under Appendix, the Planning Department can provide assistance.

A. Building Permits

Standard building permits for residential buildings are treated as exempt under Appendix C if the homesite lease or other transaction authorizing the use of land was subject to review and approval by the TERC. A building permit for a residential building within a planning unit of the Land Use and Development Plan that was *not* subject to review and approval by the TERC when the homesite lease was granted will be treated as low-impact development.

B. Renovation and Replacement of Existing Facilities.

Actions related to tribally owned (or leased) and managed facilities as listed below, are treated as low-impact development:

1. Replacement-in-kind of utilities and building components;
2. Building alteration or renovation that does not substantially change the function or general appearance of existing buildings, or substantially enlarge the footprint of existing buildings;
3. In the case of non-residential structures, including commercial, industrial, and public buildings:
 - (a) The facilities and improvements are in place and will not be changed in size nor capacity by more than 20 percent; and
 - (b) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

C. Rights-of-Way.

1. Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing development permit covering the same or similar impacts in the right-of-way area.
2. Installation of service lines to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines and the Cultural Resources Department has given clearance relating to cultural resources.
3. Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.

D. Minerals.

1. Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.
2. Approval of mineral lease adjustments and transfers, including assignments and subleases.

E. Forestry.

1. Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.
2. Approval and issuance of cutting permits for forest products not to exceed \$5,000 in value.
3. Approval and issuance of paid timber cutting permits or contracts for products valued at less than \$25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
4. Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

5. Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.
6. Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.
7. Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
8. Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
9. Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
10. Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
11. Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; Shall be identified through a collaborative framework as described in “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;” Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)
12. Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or

replace minor facilities damaged by fire. Such activities: Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and Shall be completed within three years following a wildland fire. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)

F. Waste Management.

1. Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by separate review by tribal and federal authorities, or, if from off-reservation, by governmental agencies with jurisdiction.
2. Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516) or Toxic Substances Control Act (P.L. 94-469).
3. Actions associated with construction of sanitation facilities to serve Indian homes and communities, *except that* the following actions are not treated as low-impact development:
 - (a) Construction of a sanitary landfill at a new solid waste disposal site, and
 - (b) Construction of a new wastewater treatment facility with direct discharge of treated sewage to surface waters.

G. Roads and Transportation.

1. Utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.
2. Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.
3. Activities included in a "highway safety plan."
4. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where not substantial land acquisition or traffic disruption will occur.
5. Emergency repairs under 23 U.S.C. 125

6. Alterations to facilities to make them accessible for the elderly or handicapped.
7. Resurfacing a highway without adding to the existing width.
8. Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g. widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).
9. Approvals for changes in access control within existing rights-of-way.
10. Road construction within an existing right-of-way which has already been acquired for which earlier environmental analysis under this Code or under NEPA has already been prepared.

H. Energy Conservation and Renewable Energy

Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that do not increase the indoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations, and government agencies. Covered actions include, but are not limited to: installation of solar hot water systems, installation of efficient lighting, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors.

I. Other.

1. Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.
2. Actions where the Tribe has concurrence or co-approval with an agency of the federal government and the action is treated as a categorical exclusion for that agency.
3. Approval of an application for Permit to Drill for a new water source or observation well.
4. Any proposed development if the environmental impacts are adequately addressed in an earlier environmental document (an EA, EIS, or SEIR), provided that the earlier document supports a determination that no extraordinary circumstance applies.

5. Approvals of leases, easements, or funds for single-family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in accordance with an approved tribal land use diagram and in compliance with applicable Federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.
6. Approval of any lease or other transaction relating to trust lands which does not require approval by the Secretary of the Interior (or the Secretary's designee) and which, if Secretarial approval were required, would be treated as a categorical exclusion.

APPENDIX B: EXTRAORDINARY CIRCUMSTANCES

A. What “Extraordinary Circumstances” Means

In these rules, the concept of “Extraordinary Circumstances” is used for determining whether to prepare an environmental assessment (EA) for a proposed action that is normally treated as low-impact development. The use of the term “Extraordinary Circumstances” has been adapted from the process that federal agencies use for compliance with the National Environmental Policy Act (NEPA). The term is used in these rules much the same way as in the federal NEPA process.

The categories of actions listed in Appendix A to these rules are treated as low-impact development and as such are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. Categorical exclusions are defined as a group of actions that would have no significant individual or cumulative effect on the quality of the human environment and, for which in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required.

This Appendix B sets out the extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. For any proposed development that is treated as low-impact (and as such is normally treated as a categorical exclusion) the TERC Board requires sufficient environmental review to determine whether it meets any of the extraordinary circumstances listed in this Appendix B. If any of these extraordinary circumstances applies to a permit application, then it must be treated as general development and an EA will be required. The applicant has the option of revising the proposed development so that the application will qualify for treatment as low-impact.

B. List of Extraordinary Circumstances

Extraordinary circumstances exist for individual actions within low-impact development categories which will or may:

1. Have significant impacts on public health or safety.
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [*see* NEPA Section 102(2)(E)].

4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places or the Hualapai Register of Heritage Places as determined by the Tribal Historic Preservation Officer.
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.
9. Violate an applicable tribal, Federal, state, or local law or requirement imposed for the protection of the environment.
10. Limit access to and ceremonial use of Indian sacred sites by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).
11. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.

APPENDIX C: EXEMPT ACTIVITIES FOR WHICH A PERMIT IS NOT REQUIRED

This Appendix lists activities that the TERC Board has determined to be exempt from the requirement to obtain a development permit. There are four categories of exempt activities:

- A. Traditional uses and practices, which the Board is authorized to treat as exempt by section 104(b) of the Code.
- B. Building permits issued by the Planning Department pursuant to the Residential Code published by the International Code Council (“ICC Residential Code”) and adopted by the Hualapai Tribal Council.
- C. Construction work related to residential a building that is treated as exempt from the building permit requirement under section R105.2 of the ICC Residential Code.
- D. Other activities that the Board has determined do not result in a “material change” in the use or appearance of any structure or in the use, appearance, quality, or protection of land, water (including wetlands), other natural resources or cultural resources of the Tribe.

Each of these categories is described in more detail below. As provided in section 103(d) of the rules, the TERC Board may make additions to this Appendix. A person proposing to conduct an activity that is not included in this Appendix may ask the Board to consider issuing a ruling that the proposed activity is considered exempt and adding it to the list.

A. Traditional Uses and Practices.

- 1. Hualapai Traditional Memorial “CRY” site locations (e.g. Blue Mountain, Milkweed Springs, Peach Springs)
- 2. Traditional Memorial “CRY” Ramadas (e.g. makeshift ramadas not made for long term use, usually are burnt to the ground during the memorial activities)
- 3. Traditional BBQ pits (e.g. vial roasting)
- 4. Traditional BBQ pit locations (e.g. behind elementary school, by the tribal gym, and any where there is sandy sediment mainly along and in washes)
- 5. Sweat Lodges
- 6. Sweat Lodge locations
- 7. Traditional gardens
- 8. Pinyon Pine nut gathering including other natural plant edibles
- 9. Plant gathering (e.g. Desert Tobacco, roots, leaves, stems, whole bushes, pods, flowers)
- 10. Mineral collecting (e.g. red paint, clay deposits)

11. Spring Sources collections (e.g. collecting water from springs sources for spiritual and healing purposes)
12. Shade Ramadas (e.g. ramadas built in backyards or anywhere near house for shade)
13. Migration trails/routes used for purposes of pilgrimages
14. After-Birth burials at various locations (e.g. after a woman gives birth, the traditional method is to bury the placenta in a location that is significant for her child's family)
15. Ceremonial sites and locations (e.g. prayer sites and shamanistic power gathering sites)
16. Existing Cemeteries
17. Traditional Burial Grounds
18. Isolated Burial Sites (e.g. Reburial Sites and
19. Traditional wood collecting (e.g. for sweat lodge fire and/or other activities related to BBQ's and Ramada Building)
20. Traditional Sweat Lodge Rock Collecting (e.g. lava, volcanic rocks), traditional Gourd Burial Sites and other sacred object burial sites
21. Associated Funerary Object Burning locations (e.g. Box Canyon)
22. Stabilization of archaeological sites (e.g. check dams, retention walls, retaining walls, backfilling, sealing for restoration purposes)
23. Stabilization and Restoration of Historic Sites and Buildings
24. Treatment of archaeological sites (e.g. excavations, subsurface testing, site monitoring)
25. Sacred Sites & Locations and other areas defined as Traditional Cultural Properties.

B. Building Permits

A building permit issued by the Planning Department pursuant to the ICC family of building codes as adopted by the Tribal Council, provided that the tribal homesite lease or other transaction authorizing the use of land for the construction has been approved by the TERC Board and a development permit has previously been issued.

C. Construction Work Treated as Exempt under the ICC Residential Code.

Certain kinds of construction work are listed in section R105.2 of the ICC Residential Code as exempt from the permit requirement for residential buildings. The TERC Board has determined that these activities generally do not result in a material change in the use or appearance of any structure or in the use, appearance, quality, or protection of land, water (including wetlands), other natural resources or cultural resources of the Tribe, and as such need not be treated as "development" as defined in section 201(d) of the Code. Accordingly, the TERC Board has decided to treat the following kinds of activities as exempt from the development permit requirement under the Code, provided that the work is associated with one or more residential buildings. Exemption from the permit process shall not be deemed to grant authorization for any

work to be done in any manner in violation of the provisions of the Code, the Building Code, or any other law or ordinance of the Hualapai Tribe or any applicable federal law.

1. One-story detached accessory structures, provided the floor area does not exceed 200 square feet (18.58 square meters).
2. Fences not over 6 feet high (1829 mm).
3. Retaining walls that are not over 4 feet in height (1219 mm) measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927 liters) and the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks and driveways not more than 30 inches above adjacent grade (762 mm) and not over any basement or story below.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches deep (610 mm).
8. Swings and other playground equipment accessory to a one- or two-family dwelling.
9. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

Other kinds of work listed as exempt in section R105.2, including work relating to electrical, gas, mechanical, and plumbing, are also treated as exempt and are hereby incorporated by reference.

D. Other Exempt Activities – No “Material Change”

The Code defines development as “the building of any structure, the making of any material change in the use or appearance of any structure, or the making of any material change in the use, appearance, quality or protection of land, water (including wetlands), other natural resources or cultural resources of the Hualapai Tribe.” The TERC Board has determined to treat the following kinds of activities as exempt from the permit requirement because they generally do not result in a “material change” as that term is used in the definition of development.

1. Any permit issued by a Hualapai Tribal government agency pursuant to any subtitle of the Hualapai Environmental Review Code, unless such a permit would authorize a “material” change that would constitute “development” as defined in the Code. In the event of doubt regarding whether any particular kind of permit qualifies for this exemption, such doubt can be resolved through a finding pursuant to section 401(h) of these Rules.