



HUALAPAI TRIBAL COUNCIL

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The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.

The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow - there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE TALL PINES

HUALAPAI TRIBAL COUNCIL RESOLUTION NO. 51-98 OF THE GOVERNING BODY OF THE HUALAPAI TRIBE OF THE HUALAPAI RESERVATION

WHEREAS, the Hualapai Tribe is a federally recognized Indian Tribe located on the Hualapai Indian Reservation in northwestern Arizona; and

WHEREAS, the Hualapai Tribal Council finds and declares that development activities within the Hualapai Indian Reservation and other lands within the Tribe's jurisdiction have a direct effect on or may threaten the political integrity, the economic security, and the health, welfare and safety of the Tribe and its members, including the environmental and cultural resources of the Tribe; and

WHEREAS, the Hualapai Tribal Council hereby declares that it is the policy of the Hualapai Tribe to protect the natural environment, including the land, air, water, minerals and all living things, of all Hualapai tribal lands; and

NOW, THEREFORE BE IT RESOLVED, that the Tribal Council, governing body of the Hualapai Tribe pursuant to its constitution hereby enacts the Hualapai Wetlands Protection and Preservation Ordinance into Law sixty (60) days from the passage of this resolution.

CERTIFICATION

I, the undersigned as Chairman of the Hualapai Tribal Council hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom 7 constituting a quorum were present at a **SPECIAL COUNCIL MEETING** thereof held on this **17TH day of August, 1998**; and that the foregoing resolution was duly adopted by a vote of 6 in favor, 0 opposed, 1 not voting, 1 excused and 1 absent pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991.

Earl Havatone
Earl Havatone, Chairman
Hualapai Tribal Council

ATTEST:

Christine Lee
Christine Lee, Secretary
Hualapai Tribal Council

July 16, 1998

HUALAPAI TRIBAL CODE

TITLE -- ENVIRONMENTAL PROTECTION

SUBTITLE L

Wetlands Protection
and Preservation

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HUALAPAI TRIBAL CODE
TITLE __ -- ENVIRONMENTAL PROTECTION

SUBTITLE I. WETLANDS PROTECTION AND PRESERVATION

PART 1. GENERAL PROVISIONS

101. TITLE

This subtitle shall be known as the "Hualapai Wetlands Protection and Preservation Ordinance."

102. STATEMENT OF FINDINGS AND PURPOSE

The Hualapai Tribe recognizes wetlands as unique, delicately balanced repositories of life having a strong physical and spiritual interconnection with Hualapai culture and traditions. Wetlands perform many functions that are important to Hualapai society, such as: providing Tribal members with the opportunity to continue to conduct ethnobotanical practices, thus ensuring the preservation and continuation of ancestral skills and uses; improving water quality; recharging groundwater; providing natural flood control boundaries and assisting in shoreline stabilization; acting as a source of filtration for non-point source run-off; and supporting a wide variety of fish, wildlife, and plants.

It is the intent of the Hualapai Tribe to establish, through this ordinance, appropriate methods and guidelines to protect existing wetland habitats from further encroachment by human activity and non-native plant, aquatic, and animal species and, if necessary, to revegetate and restore wetland habitats to their natural state.

To ensure the effectiveness and continued success of this ordinance, the Hualapai Tribe has established herein methods for the periodic assessment and monitoring of surface waters and ecological functions associated with areas designated as wetland habitats, and for the evaluation of the effectiveness of restoration activities. In addition, and in recognition of the increasing pace of economic development taking place on Hualapai lands, this ordinance also establishes procedures for locating and identifying the most beneficial areas where construction of artificial wetlands may be initiated in anticipation of unavoidable losses. The goal is to provide an efficient and predictable framework to assist in mitigating or offsetting wetland losses caused by permitted human activities, thus ensuring cooperation with a nationwide policy of "no net loss" of wetland habitats. These planned programs and activities, however, may be contingent upon available funding and, if necessary, will be balanced against the contemporary needs of the Hualapai Tribe.

103. ANTI-DEGRADATION POLICY

It is the policy of the Hualapai Tribe to maintain and protect existing uses and water quality, to provide protection for higher quality waters, and to provide protection to any areas designated as unique wetlands. Any efforts to lower water quality in Class I and unique wetlands, which are both considered to be high quality waters, as well as in wetlands listed as Traditional Cultural Places, is strictly prohibited. It is recognized, however, that some allowances of lower water quality may be necessary in Class II and/or Class III wetlands in order to accommodate important economic or social development in areas where these wetlands are located. These allowances, however, may not be authorized until the TERC, the Department of Natural Resources and the Water Resource Program have taken steps to ensure that water quality adequate to protect existing uses, functions and values can and will be maintained. Wetlands are classified according to the procedures described in Part 2 of this Subtitle. Methods to ensure that this antidegradation policy will be met are described in Part 3 of this Subtitle (Sections 301, 304 and 305).

104. COMMUNITY EDUCATION AND AWARENESS

The Hualapai Tribe considers the dissemination of information relating to actions promoting the welfare of the Tribe's natural resources to be crucial to the community's overall understanding of such projects, and to their awareness of the responsibilities and cooperation expected of them. Thus, to ensure the effectiveness of this ordinance, the Hualapai Departments of Natural and Cultural Resources shall coordinate with each other to prepare, or directly assist in the preparation of, educational materials describing the cultural, economic, and scientific significance attributed to wetlands located on Hualapai lands (this action will be carried out subsequent to the identification of available funding for such a project). These educational materials shall be made available to the general public through a variety of methods including, but not limited to, publication in the local newspaper, posting in high traffic areas, and/or distribution of informative leaflets on an individual basis. If feasible and/or necessary, the Hualapai Departments of Natural and Cultural Resources shall coordinate with each other to appoint and periodically provide a speaker to conduct wetlands awareness presentations for members of the community. Such members may include, but are not limited to, hunting guides, river runners, cattle owners and, as an introductory matter, schoolchildren and Youth Camp participants.

105. DEFINITIONS

For the purposes of this ordinance, the following terms shall have the meanings set forth below:

- (a) "Designated use" means a function or set of functions, established and agreed upon by the Hualapai community following public hearings and approval by the Hualapai Tribal Council, to be conducted on wetlands located on Hualapai tribal lands.

- (b) "Existing use" means a use that has actually occurred on a surface water, including a wetland, on or after November 28, 1975 or a use that the existing water quality of a surface water will allow.
- (c) "Full body contact" means a use of a wetland that causes the human body to come in direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely to occur and certain sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
- (d) "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 Hualapai Indian country, as that term is defined in 18 U.S.C. § 1151. This includes but is not limited to approximately 1,000,000 acres on the southwestern edge of the Colorado Plateau and areas in Valentine (approximately 15 miles west of Peach Springs) and on the Big Sandy River (approximately 13 miles north of Wikieup and 50 miles southwest of Peach Springs).
- (e) "In-kind replacement" means replacing one type of wetland with another of the same type and condition (e.g., compensating for the loss of a salt marsh by creating or restoring a physically and biologically similar salt marsh).
- (f) "Lacustrine" refers to wetlands and deep-water habitats exceeding 20 acres in size. They may be in depressions or dammed channels and lack vegetation that has an areal coverage of greater than 30 percent. They may be tidally influenced, but ocean-derived salinity is always less than .5 parts per thousand.
- (g) "Mitigation banking" means a wetland restoration, creation, or enhancement effort undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when compensatory mitigation is not appropriate, practicable, or as environmentally beneficial at the development site.
- (h) "Native animal life" means animals that have been culturally and scientifically acknowledged as constituting part of the traditional ecosystem of wetland habitats located on Hualapai tribal lands. Representatives of this group include elk, beaver, desert big horn sheep, mule deer, and spotted bats.
- (i) "Native aquatic life" means fish and amphibians that have been culturally and scientifically acknowledged as constituting part of the traditional ecosystem of wetland habitats located on Hualapai tribal lands. Representatives of this group include Speckled Dace, Longfin Dace, Flannelmouth Suckers, Bluehead

Suckers, Razorback Suckers, Humpback Chub, Red Spotted Toad, Arizona Toad, Woodhouse Toad, Leopard Frog, Canyon Tree Frog, and Bullfrog.

- (j) "Native avian life" means birds that have been culturally and scientifically acknowledged as constituting part of the traditional ecosystem of wetland habitats located on Hualapai tribal lands. Representatives of this group include the Southwestern Willow Flycatcher and Peregrine Falcon, currently listed as endangered species by the U.S. Fish and Wildlife Service, Blue-gray Gnatcatcher, Bell's Vireo, Lucy's Warbler, Yellow Warbler, Brown-headed Cowbird, Great-tailed Grackle, Mallard Duck, Great Blue Heron, and Western Grebe.
- (k) "Native plant life" means flora that have been scientifically and culturally acknowledged as constituting part of the traditional ecosystem of wetland habitats located on Hualapai tribal lands. Representatives of this group include Arrowweed (*I'thav*), Gooding's Willow (*I'yo*), Cattail (*Hamsi'iv*), Cat's Claw (*Gijes*), and Coyote Willow (*I'yo*).
- (l) "Non-native species" means feral burros, mules and horses, cows and other range animals introduced onto Hualapai tribal lands and not recognized -- culturally or scientifically -- as forming part of the original indigenous population of inhabitants; plant species such as Salt Cedar (Tamarisk) and Camelthorn (*Alhagi camelorum*); aquatic species such as bass and carp; and any other species of wildlife, plant life, and animal life determined to be traditionally uncharacteristic of the area.
- (m) "Off-site mitigation" means creating or restoring a wetland on a different parcel of land from the wetland that has been adversely affected.
- (n) "On-site mitigation" means creating or restoring a wetland on the same parcel of land as the wetland that has been adversely affected.
- (o) "Out-of-kind replacement" means compensating for the loss of one type of wetland by creating or restoring a wetland of a different kind or type.
- (p) "Palustrine" refers to all non-tidal wetlands dominated by persistent vegetation and tidal wetlands where salinity due to ocean-derived salts is below .5 parts per thousand. Also included are non-vegetated wetlands of less than 20 acres that do not have an active wave-formed or bedrock shoreline or a depth greater than 6.6 feet at low water, and have ocean-derived salinity of less than .5 parts per thousand. The Palustrine system encompasses vegetated wetlands traditionally called by such names as marsh, swamp, bog, and fen. It also includes small, shallow, permanent or intermittent water bodies often referred to as ponds. Palustrine wetlands may also occur as islands in lakes or rivers.

- (q) "Partial body contact" means the use of a wetland which may cause the human body to come in contact with its waters, but not to the point of complete submergence. The use is such that ingestion of the water is not likely to occur, nor will sensitive body organs such as the eyes, ears, or nose normally be exposed to direct contact with the water.
- (r) "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.
- (s) "Riparian areas" have distinct resource values and include vegetation habitats or ecosystems that are associated with bodies of water (streams, lakes, or rivers), or are dependent on the existence of perennial, intermittent, or ephemeral surface or subsurface water drainage. Riparian areas do not include artificially created stock ponds, man-made storage reservoirs constructed primarily for conservation or regulatory storage, municipal and industrial ponds, or man-made water transportation, distribution, off-stream storage and collection systems.
- (t) "Riverine" refers to wetlands contained within a channel except when dominated by wetland vegetation (trees, shrubs, emergents, emergent mosses, or lichens) or in habitats containing ocean derived salts in excess of .5 parts per thousand. The Riverine system is bounded by uplands or other wetland systems. It begins where tributary streams originate or where the channel leaves a lake. It ends when entering a lake or the Estuarine system. In braided streams, the system is bound by the banks forming the outer limits of the depression within which the braiding occurs.
- (u) "Significant degradation" means adverse ecological conditions located within Hualapai wetland areas and characterized by such environmental afflictions as the presence and proliferation of algal mats resulting from fecal contamination that eliminate oxygen from waters, thereby asphyxiating native fish and plant life; the absence or near absence of native plant life associated with Hualapai wetland habitats such as cattails, rushes, sedges, and Gooding's and Coyote willows; the erosion of soil and grass conditions in and along wetland borders and banks due to trampling by wildlife or man-made activities; the contamination of wetlands and areas directly surrounding them by man-made pollutants or by-products of the natural surroundings; and any other environmental calamity causing and/or likely to create irreversible damage if not addressed in a timely manner.

- (v) "Tribal Environmental Review Commission" or "TERC" means the administrative body established under Section 301 of the Hualapai Environmental Review Code that is responsible for reviewing and regulating, including issuing permits for, all development activities that are proposed for any site within Hualapai tribal lands.
- (w) "Tribal Historic Preservation Officer" means the duly appointed Director of the Hualapai Cultural Resources Department.
- (x) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, bogs, vernal pools, fens, cienegas, and marshes.
- (y) "Wetlands delineation" means the process of determining the presence of wetlands and the extent of their boundaries.

106. APPLICABILITY

The provisions of this ordinance and regulations promulgated under this ordinance shall apply to all persons residing on, doing business on, visiting, in transit through, exercising rights of way on or owning property within Hualapai tribal lands.

107. ORDINANCE REVIEW AND REVISION

This ordinance is intended to be a dynamic, flexible document to address one of the many contemporary environmental challenges faced by the Hualapai Tribe. However, the Tribe recognizes the impossibility of completely resolving or anticipating all of the issues and concerns, both present and future, that may necessitate appropriate action and response. It is therefore directed that, within a period of three to five years, this ordinance will be subject to complete review and, if necessary, revision by the Hualapai Tribal Council. This procedure will ensure that the actions enumerated in this ordinance remain current and meet new demands which are currently unforeseen.

108. EFFECTIVE DATE

This ordinance shall become effective upon its enactment by the Tribal Council.

109. SEVERABILITY

If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the remainder of this ordinance and the application of such

provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this ordinance are severable.

PART 2. DESIGNATION OF WETLANDS

201. OVERVIEW

Members of the Hualapai Natural Resources Geographic Information System (GIS) Program have, in conjunction with botanical and environmental experts employed by the Tribe, conducted a thorough reconnaissance of Hualapai tribal lands and delineated a total of 956 acres meeting the characteristics of a wetland habitat. These delineations are based on interpretations of aerial photographs as well as detailed, on-the-ground examinations of wetland sites. Wetlands located on Hualapai tribal lands have considerable hydrological, physical, biotic, and chemical variability and are comprised of numerous springs, extensive riparian expanses along the Colorado River and its tributaries, riparian habitats along perennial reaches of Truxton Wash and Trout Creek (located on the Hualapai Tribe's satellite territory southwest of Peach Springs), and backwater marshes and slough of the Colorado River and Lake Mead.

202. GEOGRAPHIC LOCATIONS AND ASSESSMENTS OF WETLAND CONDITIONS

Wetlands located on Hualapai tribal lands have been evaluated and categorized into three distinct classes based on their ecological soundness and/or state of degradation. Wetlands in Class I are considered to be in pristine, undisturbed conditions and require little, if any corrective action. Wetlands in Class II are considered to be suffering from mild to moderate ecological degradation. These wetlands are characterized by the presence of non-native plant species which, if left undisturbed, threaten to overwhelm indigenous flora; the presence of naturally occurring and/or man-made surface contaminants; and the scarcity of native animal, avian, aquatic, and plant life. Wetlands in Class III are considered to be suffering from significant degradation and require immediate corrective action. These wetlands are characterized by the proliferation of non-native plant species and the absence or near absence of indigenous flora, the presence of soil erosion in and along borders and banks due to excessive animal and/or human traffic, the trampling of the remaining vestiges of native plant life, the presence of noxious surface contaminants such as algal mats, and the absence or near absence of native aquatic and avian life. The geographic location of these wetlands, their categorization, type, and social significance are listed in appendix "A".

203. COMMUNITY PARTICIPATION

(a) Public Hearing

Prior to establishing, adding or removing any designated use, or establishing subcategories of a use on a designated wetland, the Tribal Environmental Review Commission (TERC) shall provide the community with notice and an opportunity for a public hearing.

Notice of such hearing is to be published at least once, not more than 30 days nor fewer than 10 days before the date selected by the TERC. Methods of providing notice to the community include, but are not limited to, publication in the local newspaper, posting in high traffic areas, and/or distribution of information leaflets on an individual basis.

(b) Recommendation to TERC

After considering testimony and community concerns expressed at a public hearing, and taking into consideration any other facts which may be deemed pertinent, the TERC shall make its recommendations to the Hualapai Tribal Council. The Tribal Council shall then vote on the establishment, addition, or removal of a designated use and afterwards direct the TERC to prepare a written summary for the community outlining the Tribal Council's decision. This summary shall be made available to the community no later than 15 days following the Tribal Council's decision, and shall be disseminated in the same manner as described in subsection (a).

204. DESIGNATED USES

(a) List of Designated Uses

Based on the classification system described in Section 202 and following compliance with the notice and hearing requirements of Section 203, wetlands located on Hualapai tribal lands have been designated for the following uses:

- (1) The propagation of aquatic life and wildlife (Classes I and II).
- (2) A potential source of future potable water for consumption by members of the Hualapai community (Classes I and II).
- (3) A source of potable water for consumption by livestock (Class II).
- (4) A source of potable water for consumption by wildlife and livestock during emergency drought conditions (select Class II sites).
- (5) Traditional Cultural Places ("TCPs") where ethnobotanical activities involving partial or full body contact with water are carried out (Classes I and II). These TCPs, described in Section 303 below and designated in consultation with the Hualapai Cultural Resources Department, reflect the Hualapai Tribe's deep commitment to the protection and preservation of landforms given special significance by the community and associated with the Tribe's cultural heritage.
- (6) Limited recreational activities that do not involve direct contact with water or disturb the natural wildlife, such as bird watching,

photography, or visual enjoyment of the natural beauty associated with wetland surroundings (Classes I and II).

- (7) Research sites used for nature observation and scientific study. Such activities include, but are not limited to, avian point counts to determine bird density, diversity, and ecology; plant and vegetation mapping and measurement; and monitoring and assessment of inorganic and organic chemical compound concentrations (Classes I, II and III).
- (8) Refuge habitats for species listed as threatened or endangered by the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department. Further information regarding the location of these refuge habitats and their special designation as unique wetlands can be located at the offices of the Hualapai Natural Resources Department.

(b) Limitations on Class III Wetlands

The uses described in paragraphs (1) through (8) cannot be realized in Class III wetlands until ecological improvements have been completed in those areas. Class III wetlands shall be off-limits to all activities, outside of those directly related to environmental restoration efforts, until further notice.

(c) Deletions of and Modifications to Designated Uses

The Hualapai Tribal Council may, after community participation and comment pursuant to Section 203, remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided that the use is not an existing use and it is not feasible for any of the following reasons:

- (1) naturally occurring pollutant concentrations prevent the attainment of the use;
- (2) natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use;
- (3) human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than leave in place;
- (4) dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such hydrologic modification in a way that would result in attainment of the use;

- (5) physical conditions related to natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life designated uses; or
- (6) controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act are necessary to attain the designated use and implementation of such controls would result in a substantial and widespread economic and social impact on the Hualapai community.

205. UNIQUE WETLANDS

(a) Classification Criteria

Hualapai wetlands may be classified as unique upon a finding that they constitute outstanding Tribal resource waters. Such a determination shall be made following compliance with the procedures established in Section 208 (including consultation with the Tribal Historic Preservation Officer in order to ensure that the functions ascribed to TCPs are not modified), and must be based upon one of the following criteria:

- (1) the surface water is of exceptional recreational or ecological significance because of its unique attributes, including but not limited to attributes related to the geology, flora, fauna, water quality, aesthetic values or wilderness characteristics of the surface water; or
- (2) threatened or endangered species are known to be associated with the surface water and the existing water quality is essential to the maintenance and propagation of a threatened or endangered species or the surface water provides critical habitat for a threatened or endangered species.

(b) Designation

At least one wetland located on Hualapai tribal lands has been identified as a critical habitat for the Southwestern Willow Flycatcher, a bird currently listed as an endangered species by the U.S. Fish and Wildlife Service. Because of its ecological significance, and based on the criteria established in subsection (a)(2), this wetland is recognized as an outstanding Tribal resource water and classified as unique. Its precise location shall remain confidential so as to prevent any unnecessary interest in, or disruption to, the overall habitat; the Hualapai Department of Natural Resources is responsible for recording and maintaining the confidentiality of the wetland's location.

(c) Changes in Classification

The selection of unique wetlands is not conclusive and, in fact, is subject to modifications based on the emergence of scientific information not currently available and/or new discoveries made during annual area survey updates.

(d) Standards

Wetlands classified as unique are subject to the policies and criteria listed below in Sections 206, 207 and 209.

206. NARRATIVE AESTHETIC CRITERIA

Class I wetlands shall be free and Class II wetlands shall be in the process of becoming free from substances attributable to wastewater and/or other discharges that:

- (a) settle to form objectionable deposits that inhibit or prohibit the habitation, growth, or propagation of native aquatic and plant life;
- (b) float as debris, scum, oil, or other matter to form nuisances;
- (c) produce objectionable color, odor, taste, or turbidity;
- (d) injure or are toxic or produce adverse physiological responses in humans, native aquatic, plant and animal life, or native avian life that consume native aquatic and/or plant life that inhabit the affected area;
- (e) cause the growth of algae or produce undesirable or nuisance plant life that inhibit or prohibit the habitation, growth or propagation of native species; and
- (f) threaten destruction, modification, or curtailment of any habitat occupied by endangered species such as the Southwestern Willow Flycatcher.

207. NARRATIVE BIOLOGICAL CRITERIA

(a) Criteria

All wetlands located on Hualapai tribal lands shall be free, or in the process of becoming free, from activities that substantially impair the natural composition, life cycle or organic character of the biological community due to physical, chemical, and hydrological changes.

(b) Indicia of Attainment of Criteria

Biological community characteristics that may be utilized as indicia of the attainment of the goal in subsection (a) include, but are not limited to:

- (1) the presence or a combination of some, but not necessarily all, of the following representative native aquatic species: Speckled Dace, Longfin Dace, Flannelmouth Sucker, Bluehead Sucker, Razorback Sucker, Humpback Chub, Red Spotted Toad, Arizona Toad, Woodhouse Toad, Leopard Frog, Canyon Tree Frog, and Bullfrog (Classes I and II wetlands);
- (2) the presence or a combination of some, but not necessarily all, of the following representative native plant species: Arrowweed, Gooding's Willow, Cattail, Cat's Claw, and Coyote Willow (Classes I and II wetlands);
- (3) the presence or a combination of some, but not necessarily all, of the following representative native avian species: Blue-gray Gnatcatcher, Bell's Vireo, Lucy's Warbler, Yellow Warbler, Brown-headed Cowbird, Great-tailed Grackle, Mallard Duck, Great Blue Heron, Western Grebe and Peregrine Falcon (in at least one wetland, the presence of the Southwestern Willow Flycatcher may be used as one indicia of the biological integrity of the area) (Classes I and II wetlands);
- (4) the presence or a combination of some, but not necessarily all, of the following representative native animal life: Antelope, Beaver, Desert Big Horn Sheep, Elk, and Mule Deer (Classes I and II wetlands).

(c) Additional Characteristics of Attainment

In addition to the criteria described in subsection (b), natural hydrological conditions necessary to support the biological and physical characteristics of a wetland should be present. Such conditions shall be such that there are no significant adverse impacts on:

- (1) water currents, erosion, or sedimentation patterns;
- (2) natural water temperature variations;
- (3) the chemical, nutrient and dissolved oxygen regime of the wetland;
- (4) the normal movement of aquatic fauna;
- (5) the pH of the wetland; and

- (6) normal water levels or elevations.

208. NUMERICAL CHEMICAL CRITERIA

(a) Monitoring

The Hualapai Department of Natural Resources, in conjunction with members of the Hualapai Water Resource Program, shall be responsible for the periodic monitoring and assessment of inorganic and organic chemical compounds located in wetland waters so as to ensure the continued level of water quality necessary to protect the designated uses described in Section 204. However, given the considerable amount of research and man-hours involved, coupled with the extensive geographic area to be surveyed, these periodic monitoring and assessment activities may be contingent upon funding availabilities and balanced against the contemporary needs of the Hualapai Tribe.

(b) Quality Assurance

The Hualapai Water Resources Program will coordinate with the U.S. Environmental Protection Agency, Region 9 in order to institute quality assurance examinations of wetland waters. However, this procedure does not preclude the Hualapai Water Resource Program from coordinating such examinations with other government agencies and/or private organizations.

(c) Analysis and Detection Goals

It is the goal of the Hualapai Water Resource Program ultimately to assume full responsibility for the analysis and detection of all inorganic and organic chemical compounds present in Hualapai waters. Inorganic and organic chemical compounds currently capable of being analyzed and detected by the Hualapai Water Resource Program include Aluminum, Arsenic, Barium, Cadmium, Chloride, Chromium, Cyanide, Fluoride, Nickel, Nitrate, Nitrite, Phosphate, Sodium, Sulfate, Total Dissolved Solids, and pH. A comprehensive list of inorganic and organic chemical compounds, and the water quality criteria necessary to protect the public health and welfare and the designated uses described herein, can be located in the Hualapai Water Quality Ordinance.

PART 3. MONITORING AND PROTECTION OF WETLANDS

301. PROHIBITED ACTIVITIES

(a) List of Prohibited Activities

Because wetlands may be negatively affected by a number of direct and indirect human actions, the activities listed below are prohibited:

- (1) Efforts to sink and operate a well near the vicinity of, or upstream from, a designated wetland. Such action may reduce or deplete the water table in a wetland, causing a temporary or permanent loss of vegetation and a decrease in habitat values.
- (2) Any construction activity located near the vicinity of a designated wetland. Such activity disturbs soil conditions and increases the possibility of inadvertently establishing a run-off corridor leading, and depositing sediments, into a designated wetland.
- (3) Any agricultural or silvicultural activities involving land-leveling or substantial earth-moving which has the possibility of creating run-off from fields and/or forest lands, and depositing sediments into a designated wetland.
- (4) Any mining activities which create run-off or siltation from new, existing, or abandoned surface and underground mines.
- (5) The disposal of pollutants into wells or in subsurface excavations. Such pollutants may migrate into wetland habitats and adversely affect existing wildlife. In addition, such actions may have an equally adverse impact on the health and welfare of the human community if a hydrological connection exists.
- (6) Any manipulation in the movement, distribution, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.
- (7) The use of wetlands as transportation corridors for egress and ingress by vehicles such as cars, off-road vehicles, farm tractors, and/or boats. Exceptions include passages associated with activities listed in Section 204 (a)(5) and (a)(7) of this ordinance.
- (8) The placing of pile-supported platforms or bridges over wetlands. In addition to blocking native plant life and causing its destruction, such platforms may also have a negative impact on the hydrology associated with riparian wetlands.

(b) Authorization by TERC or Corps of Engineers

Notwithstanding the provisions of subsection (a), development activities affecting wetlands may be authorized by the TERC pursuant to a development permit issued under Sections 501-509 and 601-604 of the Hualapai Environmental Review Code (Subtitle A of this Title) or by the U.S. Army Corps of Engineers pursuant to a dredge and fill permit issued

under Section 404 of the Federal Clean Water Act, 33 U.S.C. § 1344. Approval of a permit or other activities governed by the TERC shall be granted only by the affirmative vote of a majority of the three-member Board of Commissioners except as provided in Section 302 of the Hualapai Environmental Review Code; if an affirmative vote is received, the TERC will adhere to all Hualapai Constitutional limits on development. Any permit application that proposes development within any Area of Special Tribal Concern (e.g., a TCP) must be presented to the Hualapai Tribal Council for ultimate resolution pursuant to Section 604 of the Hualapai Environmental Review Code.

(c) Special Provisions for TCPs

In the case of a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency which affects or has the potential to affect a wetland listed as a Traditional Cultural Place, compliance with the procedures established in Section 303 of the Hualapai Cultural Heritage Resources Ordinance is required. Such project, activity, or program includes, but is not limited to, the following:

- (1) those carried out by or on behalf of a federal agency;
- (2) those carried out with federal financial assistance;
- (3) those requiring a federal permit, license, or approval; and
- (4) those subject to state or local regulation administered pursuant to delegation or approval by a federal agency.

(d) Mitigation of Impacts

Any activity listed in subsection (a) that is undertaken pursuant to a TERC or U.S. Army Corps of Engineers permit is subject to review by the TERC in order to ensure compliance with the conditions outlined in the permit and to mitigate any unforeseen impacts that may ensue. If adverse impacts are discovered on nearby wetlands, the person receiving the permit or authorization may be ordered by the TERC to terminate the activity or to mitigate the impacts, including by repairing, rehabilitating or restoring the affected wetland. Failure to abide by an order of the TERC may result in the imposition of civil and/or criminal penalties, as provided in this ordinance and the Environmental Review Code.

302. WETLANDS COMPENSATORY MITIGATION PLAN

(a) Mitigation Review Team

In order to reconcile the diverging interests, goals, and values associated with economic development and the protection and preservation of key natural resources, this ordinance authorizes the periodic selection and establishment of a Mitigation Review Team

("MRT"). The team, to be selected by the TERC, shall be comprised of individuals possessing scientific, geographic, and cultural knowledge of Hualapai wetlands, including their functions and values, as well as a comprehensive understanding of the purposes and goals associated with mitigation measures. The MRT will be responsible for locating and identifying suitable areas (in consultation with the Department of Natural Resources) where construction of artificial wetlands may be initiated in anticipation of unavoidable losses due to permitted human activities. The number of individuals selected and their term of service on the MRT will be determined by the TERC and may be contingent on the demand for development activities on Hualapai tribal lands. These procedures reflect the Hualapai Tribe's intention to adhere to a nationwide policy of "no net loss" of wetland habitats, and exemplify the Tribe's environmental ethic.

(b) Consultation Requirement

Prior to initiating any mitigation project under this section, the MRT is required to contact the U.S. Army Corps of Engineers, provide notice in writing of the proposed project, and allow an opportunity for comment and/or consultation. Such procedures are necessary to ensure compliance with the Corps' wetlands compensatory mitigation policies, and thus avoid any costly, time-consuming actions that may be subsequently disapproved.

(c) Review of Proposed Plan

If agreement is reached with the U.S. Army Corps of Engineers on a proposed mitigation project, pursuant to the consultation provisions in subsection (b), the MRT and the TERC will be responsible for drafting and submitting a proposed mitigation project plan to the Hualapai Tribal Council for review and approval. If approved, or subsequent to any modifications, the plan will then be presented to the Hualapai community for public comment and review according to procedures set forth in Section 108. Any concerns voiced by members of the community will be addressed and, if possible, reconciled before the proposed plan is submitted to the U.S. Army Corps of Engineers for final review. To ensure the comprehensiveness of such a plan, the MRT shall follow the U.S. Army Corps of Engineers' *Habitat Mitigation and Monitoring Proposal Guidelines* (June 1, 1993) (see appendices C and D).

(d) Clean Water Act Requirements

In preparation for any actions associated with surveys of possible wetland mitigation sites, members of the MRT shall remain cognizant of the fact that, pursuant to Section 404(b)(1) of the Federal Clean Water Act, 33 U.S.C. § 1344(b)(1), no discharge of dredge or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. According to the U.S. Army Corps of Engineers' *Habitat Mitigation and Monitoring Proposal Guidelines* (June 1, 1993), practicality is defined in terms of cost, logistics, and existing technology.

(e) Location of New Wetlands

- (1) One of the primary considerations involved in the creation of an artificial wetland is identifying the most beneficial area where such construction may take place. When conducting a survey for such areas, members of the MRT shall look for:
 - (A) sites containing highly disturbed lands or prior converted wetlands, with a preference given to sites with high restoration potential;
 - (B) sites with no high-quality wetlands present where wetlands could be created;
 - (C) sites containing some upland areas to provide diverse habitat; and
 - (D) sites where adequate hydrology can be secured.
- (2) The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers prefer that the creation of a new wetland be as close to the affected wetland as possible, and connected to the same water source. Thus, as part of the location and identification process, the following considerations must also be taken into account:
 - (A) The opportunity to create the wetland on-site, as opposed to off-site. On-site mitigation is preferable when there is a practicable opportunity to compensate for important local functions, including local flood control functions, habitat for a species or population with a very limited geographic range or narrow environmental requirements, or where local water quality concerns dominate. When considering between on-site and off-site mitigation, careful consideration should be given to:
 - (i) the likelihood for successfully establishing the desired habitat type;
 - (ii) the compatibility of the mitigation project with adjacent land uses; and
 - (iii) the practicability of long-term monitoring and maintenance to determine whether or not the effort is successful.

(f) In-Kind Compensation Preferred

In the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should be generally required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g., of greater ecological value to a particular region).

303. PERMITTED ACTIVITIES IN TRADITIONAL CULTURAL PLACES

Several wetland habitats located on Hualapai tribal lands have been accorded special significance by members of the Hualapai Tribe as a result of their geography and distinct affiliation with the Tribe's traditional cultural values, uses, and functions. These wetlands, designated as Traditional Cultural Places in consultation with the Hualapai Cultural Resources Department and listed in the Hualapai Register of Heritage Places, serve as exclusive harvest areas where members of the Tribe may search for and extract plant life and vegetation to be used for ethnobotanical purposes (e.g., constructing baskets and cradle boards, as well as for medicinal and/or any other purposes commonly identified by the Hualapai community as being associated with traditional uses). In addition to functioning as traditional harvesting areas, wetlands designated as TCPs also serve as the locations for private social events, religious gatherings and sensitive ceremonial activities. In keeping with the purpose and intent of this ordinance, it is directed that the removal of plant life and vegetation from wetland habitats be conducted in a responsible manner so as to minimize the impact of human activities in such areas and thus preserve the delicate balance of the existing ecosystem. All members of the Hualapai Tribe partaking in cultural activities that require the extraction of wetland plant life and vegetation are directed to practice due care and consideration when visiting such areas; to avoid the unnecessary and/or excess extraction of wetland plant life and vegetation; and to ensure that, upon departure from such areas, any and all steps have been taken to remove any natural debris or by-product resulting from extractive activities or any man-made products brought to the site. These steps should also be applied upon completion of private social events, religious gatherings and sensitive ceremonial activities. The goal is to ensure that hazards to the environmental integrity of TCPs are minimized as much as possible while simultaneously preserving the cultural identity, mores, and traditions of the Hualapai Tribe.

304. PLANNED ACTIONS TO IMPROVE AFFECTED WETLANDS

To protect and preserve areas designated as wetlands on Hualapai tribal lands, the following actions may be implemented and carried out by the Hualapai Department of Natural Resources:

- (a) Enclose and exclude from further use any and all wetland habitats found to be in a state of significant degradation. Precautions should be taken to ensure that the method of exclusion used does not pose a threat to, or endanger, native wildlife or domestic range animals. In addition, water delivery systems should

be constructed in the interim so as to lessen the impact of such enclosure(s) on native wildlife and domestic range animals dependent on the area for water consumption.

- (b) Remove pollutants and other contaminants, restore and, if necessary, revegetate wetlands identified as suffering from significant degradation, using sound scientific practices that minimize any further negative impacts to the area. Such scientific practices include the identification and manual removal of non-native plant life, followed by the reintroduction of indigenous flora. Reintroduction is to be accomplished through reseeding or planting, using seeds, plants or cuttings that have been collected from existing wetlands located along the same geographic area and elevation as those being restored.
- (c) Capture and remove non-native wildlife identified as posing a threat or directly contributing to the deterioration of designated wetlands. Captured wildlife shall be treated humanely, removed to a holding pen or corral, and detained until their final disposition, as determined by appropriate authority.
- (d) Capture and remove domestic livestock identified as posing a threat or directly contributing to the degradation of designated wetlands. Such actions are to be carried out only after communications between the animals' owner(s) and the Agricultural Program Manager have failed to elicit a proper response (i.e., the removal of the animal(s) from the affected area). Livestock removed from wetland areas are to be detained for a period of five (5) days in a designated holding pen or corral in order to allow owners the opportunity to retrieve them. Notice of the capture of nuisance livestock will first be provided to the grazing association president of the cattle district in which the animal(s) were discovered by the Agricultural Program Manager. If the association president determines that the animal held in captivity is not his or her property, it shall be his or her responsibility to notify the other association presidents of its detention. Costs incurred as a result of the capture and care of livestock will be passed on to owners and must be paid prior to the release of the animal(s). An additional fee of \$5 per head per day will be assessed if it is determined that the livestock directly contributed to the significant degradation of a designated wetland. Such payments shall be deposited into the Wetlands Preservation and Conservation Fund established under this ordinance, and shall be used in the restoration and upkeep of damaged wetlands. After five (5) days, any unclaimed livestock, livestock not branded or failing to have identifying earmarks, or livestock the ownership of which is disputed and cannot be resolved shall be deemed the property of the Hualapai Livestock Association pursuant to section 6, subparagraph (f) of Hualapai Ordinance 2B, *Providing for the Proper Utilization of the Range Resources of the Hualapai Indian Reservation*. Coordination between the Hualapai Livestock Association and Department of Natural Resources will be required in order to determine a

percentage to be allocated to the aforementioned Wetlands Preservation and Restoration Fund following the sale of such livestock.

- (e) Capture and remove non-native aquatic life using approved techniques that do not affect or that minimize the effect on native aquatic life. Such techniques include, but are not limited to, the use of fish nets. Non-native aquatic life such as carp agitate wetland bottoms, thereby adding to the turbidity of wetland waters and the disruption of the natural habitat.
- (f) Remove dead animals from wetlands. Animal carcasses contaminate or have the potential to contaminate wetland habitats.

Other wetland improvement methods not listed herein may be required and used based on future assessments and/or the emergence of scientific procedures not currently available.

305. PERIODIC ASSESSMENT AND MONITORING

In order to ensure the effectiveness of wetland protection and restoration projects on Hualapai tribal lands, the Hualapai Department of Natural Resources shall conduct periodic assessments and monitoring of any and all areas designated as wetlands. Notwithstanding the foregoing, however, given the considerable amount of research and man-hours involved in such tasks, coupled with the extensive geographic area to be surveyed, these periodic assessments and monitoring activities are contingent upon the availability of funding and shall be balanced against the contemporary needs of the Hualapai Tribe. If necessary, periodic assessments and monitoring activities may be decreased in scope and/or deferred until the necessary funding is available. If, however, funds are available to conduct such periodic assessments and monitoring, the following steps shall be carried out by the Hualapai Department of Natural Resources:

- (a) Conduct annual surveys of designated wetland habitats in close proximity (within ___ miles) to Peach Springs and which have the potential of significantly affecting the quality of water used for domestic purposes. These surveys shall include biological measurements such as plant, macroinvertebrate, and fish that have shown promise for monitoring wetland quality; photo points established to document changes in vegetation communities and channel morphology; as well as criteria listed in Section 208 of this code.
- (b) Conduct surveys every other year of wetland habitats located more than ___ miles from Peach Springs.
- (c) Conduct surveys every five years of wetland habitats found to be in pristine condition during original wetland surveys (Class I wetlands).

- (d) Conduct damage assessments of wetland habitats following man-made and naturally-induced flooding along the Colorado River Corridor.
- (e) Conduct quarterly surveys and sampling of wetland habitats found to be suffering from significant degradation (Class III) and undergoing restoration efforts.
- (f) Revise restoration activities where ecosystem recovery objectives are not being met.

306. WETLANDS PRESERVATION AND RESTORATION FUND

This ordinance authorizes the establishment of a special fund known as the Wetlands Preservation and Restoration Fund. Monies collected by the Hualapai Tribal Court and/or federal government as a result of the imposition of civil and/or criminal penalties associated with unauthorized activities affecting designated wetlands are to be deposited into this fund. These monies will in turn be used to remedy, to the extent possible, the damages and/or indirect effects resulting from such illegal activities, as well as to pay for normal habitat improvements, operations, and expenses. The Hualapai Finance Department is charged with maintaining records of monies received and expended in connection with restorative projects.

PART 4. ENFORCEMENT

401. INVESTIGATIONS

Pursuant to Section 701 of the Hualapai Environmental Review Code, the TERC or a qualified person designated by the TERC is authorized to investigate compliance with permits issued in accordance with Section 304 of the Environmental Review Code or pursuant to Section 404 of the Federal Clean Water Act and, if necessary, to determine if any activities being carried out without a permit near areas designated as wetlands are in violation of this ordinance. As part of such investigation, the TERC or a qualified person designated by the TERC may serve any person with a letter of inquiry requesting information pertaining to activities suspected of adversely affecting designated wetlands. Any such letter of inquiry shall notify the person to whom it is addressed that answers must be provided to the TERC within sixty (60) days; failure to respond may result in the imposition of civil penalties; information provided may be used in law enforcement proceedings; and giving false information is in itself a violation of this ordinance.

402. NOTICES OF VIOLATION

If the TERC has reason to believe that a violation of this ordinance has occurred, the TERC is authorized to issue a Notice of Violation, pursuant to Section 702 of the Environmental Review Code, to the person(s) apparently responsible for the violation (this may include employers if it is determined that their employees committed, or are suspected of

committing, a violation of this ordinance while acting as an agent or employee of a business, corporation, enterprise, etc.). If the apparent violation occurred on land in which a person other than the alleged violator or multiple individuals hold a property interest (e.g., the Cattle Grazing Association), a Notice of Violation shall also be issued to the holder of such an interest. A Notice of Violation shall include:

- (a) a concise statement of the facts believed to constitute a violation;
- (b) specific reference(s) to the provision(s) of this ordinance and/or the rules to carry out this ordinance that allegedly have been violated;
- (c) a summons to appear before the Commission at an enforcement hearing at a specified time and date; and
- (d) a statement that failure to appear may result in the imposition of penalties.

403. ADMINISTRATIVE ENFORCEMENT

Within thirty (30) days after the date of an enforcement hearing pursuant to Section 402, the TERC shall issue a written decision and may issue an Enforcement Order, pursuant to the provisions of Section 703 of the Environmental Review Code. As specified in that section, an Enforcement Order may require the violator(s) to comply immediately with the requirements of this code, may suspend or revoke a permit for failure to comply, and may specify a time and conditions for compliance. The order may also require mitigation of damage or take whatever corrective action the Commission deems appropriate, and may impose penalties.

404. EMERGENCY ORDERS

The TERC may also issue emergency orders pursuant to Section 704 of the Environmental Review Code, if there is an imminent and substantial threat to the public health, welfare or environment. Such orders are effective immediately upon issuance and remain in effect for a period not to exceed sixty (60) days.

405. JUDICIAL ENFORCEMENT

It is a criminal offense for any person without the appropriate permit to knowingly conduct any of the prohibited activities listed in Section 301, and the TERC may request the Tribal Attorney General or other tribal attorney to institute or have the federal government institute criminal proceedings in tribal court or in federal court, as the case may be. The TERC may also pursue civil enforcement proceedings against any such person, and may seek judicial enforcement of any other provisions of this code, pursuant to the provisions of Section 705 of the Environmental Review Code. In the event that the Tribal Council or any Tribal agency or department is alleged to have violated this code or regulations or permits

issued under this code, the provisions of Section 706 of the Environmental Review Code shall apply.

406. TRESPASS

Any non-member of the Hualapai Tribe who violates any prohibition listed in Section 301 of this ordinance without having obtained the relevant permit is considered to have committed a trespass. Non-member Indians may be subject to prosecution in Tribal Court; non-Indians may be subject to federal prosecution; all persons may be subject to civil actions in Tribal Court for damages to Hualapai wetlands, pursuant to Section 405. Any law enforcement action taken on grounds of trespass may be separate from enforcement actions taken under other provisions of this ordinance. The circumstances relating to the trespass may be taken into consideration in the event that civil penalties are imposed.

407. CALCULATION OF CIVIL PENALTIES

The TERC may issue rules, pursuant to the procedures set forth in Sections 304 and 305 of the Environmental Review Code, or guidelines for the assessment of civil penalties imposed pursuant to this ordinance. In developing rules or guidelines for the amount of penalties to be imposed, the TERC may consider the factors outlined under Section 309(g)(3) of the Federal Clean Water Act, 33 U.S.C. § 1319(g)(3). These include the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. Penalty amounts may also reflect consideration of the following factors:

- (a) costs of restoration and repair of damaged wetlands;
- (b) enforcement and administrative costs associated with the assessment and collection of the civil penalty;
- (c) costs associated with documentation and evaluation of affected wetlands in order to assess damages and plans for restoration;
- (d) costs of any additional mitigation measures the TERC deems appropriate to implement;
- (e) an amount based on the loss to the Tribe of the use of wetlands; and,
- (f) for any second offense, a factor allowing the total penalty amount to be doubled or trebled, in the TERC's judgment, depending upon the nature of the offense.

408. REFERRAL TO FEDERAL AUTHORITIES

(a) Civil Actions

When, in the judgment of the TERC, it would serve the interests of the Hualapai Tribe to file a civil action in federal court to seek protection or recognition of the Tribe's rights and interests under federal law relating to the protection and preservation of wetland habitats, the TERC shall so advise the Tribal Chairperson. In most circumstances, the filing of such an action must be authorized by the Tribal Council. In the event that the TERC and the Tribal Chairperson both conclude that the matter rises to the level of an emergency, the Chairperson is authorized to file such an action on behalf of the Tribe.

(b) Penalties

In lieu of, or in addition to, imposing civil penalties under this ordinance, the TERC may refer matters to federal authorities. Any penalties collected under this ordinance by the TERC or by the federal government and paid to the Hualapai Tribe (pursuant to 43 C.F.R. § 7.17(c)) shall be deposited in the Wetlands Preservation and Restoration Fund established under this ordinance.

(c) Information

When, in the judgment of the TERC, it would serve the interests of the Hualapai Tribe, the TERC is authorized to provide information to, and cooperate with, federal agencies, state agencies, and other Indian Tribes in the enforcement of the Federal Clean Water Act and the preservation and protection of wetlands within Hualapai tribal lands.

409. CIVIL FORFEITURES

(a) Seizure and Forfeiture of Personal Property

In the event that a Tribal Law Enforcement Officer is present at the scene of any violation of this ordinance, whether or not in the process of serving a Notice of Violation, the Officer is authorized to seize any and all items of personal property that have been involved in the violation. Such items are forfeited and become the property of the Hualapai Tribe at the time of seizure as a result of use in an illegal activity. If the former owner is present at the time of seizure, the Officer shall obtain from him or her the necessary information regarding the property and provide such person with details on the procedure(s) required to seek the return of such property; if the former owner is not present at the time of seizure, a notice shall be posted and other reasonable steps taken to inform him or her of the legal actions taken.

(b) Redemption of Seized Property

The former owner of such property may file a Petition for Redemption of the property. Such a petition may be filed with the TERC within thirty (30) days of the initial service of notice to the former owner. Any such petition shall be considered in an administrative hearing, conducted pursuant to Section 305 of the Hualapai Environmental Review Code and the rules issued thereunder and under Subtitle C of this Title. The decision issued after an administrative hearing may be appealed to the Tribal Court pursuant to Section 502. In the alternative, or while a Petition for Redemption is pending or the matter is under judicial review, the TERC is authorized to return the seized property to its former owner upon timely payment of any and all related civil penalties that may have been assessed against the violator.

(c) Use by the TERC

Any forfeited property that has not been redeemed or otherwise returned to the former owner shall be made available for the use of, or disposition by, the TERC thirty (30) days after the issuance of a final decision by the Tribal Court or thirty (30) days after issuance of a decision following an administrative hearing, whichever is later. At any time up until the property is made available for the use of the TERC, the TERC is authorized to return the property to the former owner if any and all civil penalties assessed against the former owner have been paid.

PART 5. REVIEW

501. RECONSIDERATION OF ADMINISTRATIVE DECISIONS

(a) Procedures

A person affected by a decision made by the TERC under this code may request reconsideration of that decision. The intent of the Tribal Council is that this procedure shall be informal, and shall be used mainly when a decision has been made on the basis of a written record without a face-to-face discussion of the issues. In reconsideration, a person affected by a decision of the TERC could submit additional written material and would be granted an informal conference with the TERC and appropriate staff. Reconsideration is to be an optional procedure, not an alternative to judicial review.

(b) Time Periods

The person seeking reconsideration must file a written Request for Reconsideration within thirty (30) days of the notice of the decision for which the reconsideration is sought. No particular form is required for such a Request. The TERC has the discretion to grant or deny the request. If the TERC does not formally deny the request within thirty (30) days of the date the request is filed, the request shall be deemed to have been denied. If a Request is

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denied, the person who filed the Request shall have thirty (30) days in which to file a Petition for judicial review Section 502.

502. JUDICIAL REVIEW

(a) Review of Administrative Hearings

Any person who participated in an administrative hearing and who is adversely affected by the outcome of the hearing shall be entitled to review of the action in Hualapai Tribal Court. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of issuance of the decision based on the Administrative Hearing.

(b) Review of Decisions without Administrative Hearings

Any person who is entitled to a hearing before a Hearing Officer shall have a right to judicial review of the original decision in the event that the TERC formally decides not to appoint a Hearing Officer or has not appointed a Hearing Officer within sixty (60) days of the date that the request for such an appointment was made. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of the date on which the 60-day period for the appointment of a Hearing Officer expires.

(c) Standards for Review. The Tribal Court shall review decisions after administrative hearings based on the pleadings and the administrative record. The Court generally shall not make its own inquiry into the facts, but it may in cases in which an appellant was entitled to the appointment of a Hearing Officer and none was appointed. In all cases, the Court may review question of law on a *de novo* basis. The Court shall not set aside or reverse a decision of the TERC or a Hearing Officer unless the Court finds that the decision:

- (1) is not supported by substantial evidence;
- (2) was issued without compliance with the requirements of this ordinance or rules issued pursuant to this ordinance;
- (3) is arbitrary and capricious; or
- (4) deprived the appellant of due process of law or other rights that the appellant may have under the Indian Civil Rights Act of 1962, 25 U.S.C. 1301-1241, or under Article IX of the Hualapai Constitution.

(c) Appeal to Tribal Court of Appeals

Final actions of the TERC taken pursuant to this ordinance which were not subject to an administrative hearing may be appealed by any person aggrieved by that action to the

Tribal Court of Appeals. In addition, orders of the Tribal Court may be appealed to the Tribal Court of Appeals in accordance with the procedures of the court.

(d) Limited Waiver of Sovereign Immunity

This section of the ordinance constitutes a limited waiver of tribal sovereign immunity for actions in tribal court against agencies and officers of the Tribe, provided that any such actions shall be limited to injunctive relief. This section shall not be construed to authorize an action against the Tribe or its officers contrary to Article XVI, Section 2 of the Hualapai Constitution.