

HUALAPAI CULTURAL HERITAGE RESOURCES ORDINANCE

**Approved and Enacted by the
Hualapai Tribal Council,
Resolution No. 13-98,
February 18, 1998**

Summary. This ordinance establishes the Cultural Resources Department of the Hualapai Tribe; defines the Department's powers and duties; delegates authority to the Department and to the Director as head of the Department, including authority to develop rules to carry out this Ordinance; designates the Director to serve as the Hualapai Tribal Preservation Officer for purposes of the National Historic Preservation Act; directs the Department to establish a Hualapai Register of Heritage Places; authorizes appropriations from Tribal funds and establishes a cultural resources revenue account; establishes a clearance requirement for undertakings that may affect cultural resources on Hualapai Tribal lands; prohibits certain kinds of activities that may affect cultural resources; authorizes the establishment of a permit program to control activities that are prohibited unless a permit has been issued; authorizes civil and criminal penalties for the enforcement of this Ordinance; authorizes administrative appeals procedures and judicial review; and provides a limited waiver of sovereign immunity authorizing actions in Tribal Court for injunctive relief (but not for money damages) to ensure that Tribal agencies and enterprises comply with the procedural requirements of the Ordinance.

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PART 1. GENERAL PROVISIONS

Section 101. Title and Summary

(a) This Ordinance may be cited as the "Hualapai Cultural Heritage Resources Ordinance."

(b) This ordinance establishes the Cultural Resources Department of the Hualapai Tribe; defines the Department's powers and duties; delegates authority to the Department and to the Director as head of the Department, including authority to develop rules to carry out this Ordinance; designates the Director to serve as the Hualapai Tribal Preservation Officer for purposes of the National Historic Preservation Act; directs the Department to establish a Hualapai Register of Heritage Places; authorizes appropriations from Tribal funds and establishes a cultural resources revenue account; prohibits certain kinds of activities that may affect cultural resources; authorizes the establishment of a permit program to control activities that are prohibited unless a permit has been issued; authorizes civil and criminal penalties for the enforcement of this Ordinance; authorizes administrative appeals procedures and judicial review; and provides a limited waiver of sovereign immunity authorizing actions in Tribal Court for injunctive relief (but not for money damages) to ensure that Tribal agencies and enterprises comply with the procedural requirements of the Ordinance.

Section 102. Findings

The Tribal Council of the Hualapai Tribe finds and declares that:

(a) The spirit and direction of the Hualapai Tribe are founded upon and reflected in its cultural heritage;

(b) The cultural heritage of the Hualapai Tribe must be preserved as a living part of community life and development and of the spiritual and religious life of the Hualapai Tribe;

(c) Many cultural resources which hold significance for the Hualapai Tribe, both within the boundaries of the Hualapai Indian Reservation and on other lands traditionally used by the Tribe, have been damaged or destroyed, sometimes inadvertently and sometimes intentionally;

(d) Preserving and caring for cultural resources will provide cultural, educational, aesthetic, inspirational, spiritual and economic benefits for current and future generations of the Hualapai Tribe;

(e) In light of the increasing pace of activities and projects that can adversely affect cultural resources (such as economic development projects, sanitation and public health developments, road building and housing construction), present governmental programs, tribal and non-tribal, to preserve the Hualapai Tribe's cultural resources are inadequate and do not ensure that future generations will have a genuine opportunity to appreciate and enjoy the rich heritage of the Hualapai Tribe;

(f) Increased knowledge about Hualapai cultural resources, along with the establishment of better means of identifying and fostering the preservation of cultural resources, will improve the planning processes used by tribal, federal, state and other government agencies and will facilitate the expeditious implementation of economic development projects;

(h) Although the federal and state government agencies have played major roles in cultural resource preservation, and both these levels of government must continue to play their proper roles, it is essential that the Hualapai Tribe expand and accelerate its cultural resource preservation programs and activities;

(i) The Tribal Council possesses the authority to enact legislation to establish programs to preserve cultural resources as an aspect of the inherent sovereignty of the Hualapai Indian Tribe, in accordance with Article V of the Constitution of the Hualapai Indian Tribe;

(j) The inherent sovereignty of Indian tribes to enact legislation for the preservation of cultural resources is recognized in federal law, including statutes such as the Archaeological Resources Protection Act, National Historic Preservation Act, and Native American Graves Protection and Repatriation Act;

(k) Under international human rights law, the Hualapai Tribe has the right to maintain its cultural integrity, and the enactment of tribal legislation to preserve cultural resources is a critical step that the Tribal Council can take to maintain the cultural integrity of the Hualapai Tribe.

Section 103. Policy

It shall be the policy of the Hualapai Tribe to:

(a) Preserve and manage cultural resources in ways that contribute to meeting the social, environmental, spiritual, economic and other needs of present and future generations;

(b) Cooperate with other Indian tribes, federal and state agencies, private organizations and individuals in the preservation and management of cultural resources;

(c) Provide leadership and technical assistance in the preservation, protection, and conservation of cultural resources by building an exemplary cultural resources management program, by sponsoring educational programs for the general public and training programs for tribal employees, by consulting and cooperating with other governmental agencies, and by making contributions to academic journals and other appropriate publications;

(d) Administer cultural resources that are within the jurisdiction or control of the Hualapai Tribe in a spirit of stewardship and for the inspiration of present and future generations;

(e) Recognize, support, and perpetuate the traditional stewardship by Hualapai people of cultural resources which are significant for Hualapai cultural heritage and which are located on

lands traditionally used by Hualapai people but not currently within the territorial jurisdiction of the Hualapai Tribe;

(f) With respect to cultural resources that are not within the jurisdiction or control of the Hualapai Tribe but which are significant for Hualapai cultural heritage, to encourage those governmental agencies that do have jurisdiction and other entities that have control to manage such resources in a spirit of stewardship and for the inspiration of present and future generations of Hualapai and non-Hualapai people;

(g) Encourage the preservation and use of historic buildings and structures located within the Hualapai Indian Reservation.

Section 104. Definitions

The following definitions apply for purposes of this Ordinance and rules issued by the Director to carry out this Ordinance. Rules issued by the Director may clarify the definitions in this section and may include definitions for additional terms, *provided* that any such additional definitions shall be generally consistent with the use of such terms in federal cultural resources law and *provided* that any intentional minor differences in the use of such terms shall be explained in the rules.

(a) "Advisory Team of Elders" means the group of Hualapai elders established pursuant to Section 207 of this Ordinance.

(b) "Archaeological resources" means any material remains of human life or activities which are at least 100 years of age and which are of archaeological interest, as further clarified in federal regulations (43 C.F.R. § 7.3(a)); *provided*, for purposes of this Ordinance the term does not include human remains and funerary objects.

(c) "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 building 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.

(d) "Department" or "CRD" means the Hualapai Tribal Cultural Resources Department created by Section 201 of this Ordinance.

(e) "Director" means the duly appointed Director of the Hualapai Tribal Cultural Resources Department.

(f) "Hualapai Register" means the Hualapai Register of Heritage Places established pursuant to Section 301 of this Ordinance.

(g) "Hualapai traditional use lands" means all lands historically or traditionally used by the Hualapai people, *except* for those lands that are currently within the boundaries of the Hualapai Indian Reservation or otherwise included in the term "Hualapai tribal lands" as used in this Ordinance.

(h) "Hualapai tribal lands" means all lands over which the Hualapai Tribe has jurisdiction, including all land within the exterior boundaries of the Hualapai Indian Reservation and all other Hualapai Indian country, as that term is defined in 18 U.S.C. § 1151.

(i) "Heritage resource" or "heritage property" means any cultural resource or property that has been determined eligible for listing in the Hualapai Register of Heritage Places.

(j) "Indian" or "Indian person" means any enrolled member of a federally-recognized Indian tribe and any other person who is considered an Indian for purposes of the Indian Civil Rights Act (25 U.S.C. § 1301(4)) and criminal jurisdiction under the federal Major Crimes Act (18 U.S.C. § 1153).

(k) "National Register" means the National Register of Historic Places established pursuant to the National Historic Preservation Act and administered by the National Park Service (36 C.F.R. parts 60, 63).

(l) "Repatriation" means the expeditious return to the Hualapai Tribe of human remains, cultural items and other objects possessed or controlled by persons and entities other than the Tribe and its members. In the event that the Hualapai Tribe comes into possession or control of items to which other tribes or individuals have rights of ownership or control, the term also means the expeditious return of such items to such tribes or persons.

(m) "Responsible agency official" means the official of a federal, tribal or state agency who has decision making authority over a particular undertaking proposed, or under consideration, by such an agency.

(n) "Responsible person" means the individual in private capacity or official in a non-governmental organization who has decision making authority over a particular undertaking.

(o) "State Historic Preservation Officer" or "SHPO" means the officer or state government agency charged under state law with responsibility for administering a state historic preservation program.

(p) "Traditional cultural place" or "traditional cultural property" means, as defined by the National Park Service in National Register Bulletin 38, a place that is eligible for the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. As used in this Ordinance this term also includes such a place if it

has been determined eligible for the Hualapai Register regardless of whether or not it has been determined eligible for the National Register.

(q) "Tribal Environmental Review Commission" or "TERC" means the Commission established pursuant to the Hualapai Environmental Review.

(r) "Undertaking" means:

(1) an "undertaking" as defined in the National Historic Preservation Act (16 U.S.C. § 470w(7)): "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including:

"(A) those carried out by or on behalf of a Federal agency;

"(B) those carried out with Federal financial assistance;

"(C) those requiring a Federal permit, license, or approval; and

"(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency"; and

(2) Any project, activity or program carried out under the authority of, or with permission from, an agency, enterprise or other entity created by the Hualapai Tribe, including any "development" for which a permit is required under the Hualapai Environmental Review Code, regardless of whether or not there is federal agency involvement sufficient to bring the project, activity or program within the coverage of paragraph (1) of this definition, *provided* that the Director, through the issuance of rules, may establish procedures to avoid the application of this term to projects, activities and programs that do not have the potential to result in changes in the character and use of cultural resources.

(3) The Director, through the issuance of rules, may establish that certain kinds of actions are "exempted categories" which generally shall not be treated as "undertakings" for purposes of this Ordinance based on a determination that the potential effects on cultural resources of undertakings within any such category are foreseeable and likely to be minimal. The Director's rules for exempted categories shall include a procedure for determining, for a particular action that fits within an exempted category, whether the particular action may affect cultural resources, and, if such a determination is made, the action shall be treated as an "undertaking." Actions that would otherwise be treated as "undertakings" under paragraph (1) of this definition may be included in exempted categories only to the extent that such treatment is authorized by the Advisory Council on Historic Preservation, through the Council's regulations or pursuant to an agreement between the Council and the Tribe.

Section 105. Severability

If any portion of this Ordinance or the application thereof to any person, court or circumstances is held invalid by a Hualapai or federal court, the invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provisions or application and to this end, the provisions of this Ordinance are severable.

Section 106. Effective Dates

The permit requirements in Part 3 of this Ordinance become effective on the date that rules to establish a permit program, issued pursuant to Section 208, become effective. All other provisions of this Ordinance become effective upon enactment by the Tribal Council.

PART 2. CULTURAL HERITAGE RESOURCES PROGRAM ADMINISTRATION

Section 201. Cultural Resources Department

(a) *Establishment.* The Hualapai Tribal Cultural Resources Department (hereafter referred to as "Department" or "CRD") is hereby established, by elevating the subdivision of Tribal Government previously known as the Office of Cultural Resources to the status of a Department.

(b) *Mission.* The Department shall be the Hualapai Tribe's lead agency for the identification, protection, preservation and management of cultural resources within Hualapai tribal lands and Hualapai traditional use lands.

(c) *Programs.* The Department shall develop and administer all programs necessary to achieve the purposes of this Ordinance, consistent with direction from the Tribal Council and Tribal Administration, including programs to:

(1) Advise the Hualapai Tribal Council, the TERC, and other departments, programs, authorities, enterprises, and other instrumentalities of the Hualapai Tribe, federal, state and local government agencies, private organizations and individuals on matters pertaining to the cultural resources in order to achieve the purposes of this Ordinance on Hualapai tribal lands and on Hualapai traditional use lands;

(2) Assume certain functions of the State Historic Preservation Officer on Hualapai tribal lands as provided by agreement with the National Park Service, coordinate with the SHPO with respect to those functions not assumed, and advise the Tribal Council regarding the desirability of assuming additional SHPO functions;

(3) Represent the Tribe in consultations with federal agencies and the SHPO for cultural resources located on Hualapai traditional use lands;

(4) Enter into interagency memoranda of agreement (MOAs) and programmatic agreements (PAs) to facilitate and advance the purposes of this Ordinance;

(5) Compile, update and maintain a cultural resources data base for Hualapai Tribal lands and Hualapai traditional use lands, including but not limited to the development of the Hualapai Register of Heritage Places;

(6) Provide appropriate education to the public (Hualapai and non-Hualapai) regarding the importance of preservation, protection and management of the cultural resources on Hualapai Tribal lands and Hualapai traditional use lands;

(7) Protect Hualapai cultural resources on Hualapai tribal lands by enforcing the prohibitions and administering the permit requirements of Part 3 of this Ordinance;

(8) Seek the repatriation of human remains and cultural items from federal agencies and "museums" (as that term is defined in the Native American Graves Protection and Repatriation Act) and other persons and establish procedures, in consultation with the Advisory Team of Elders, for determining the appropriate disposition of repatriated items;

(9) Manage collections of cultural resources excavated from Hualapai tribal lands and Hualapai traditional use lands; and

(10) Prepare a Cultural Resources and Historic Preservation Plan for the Hualapai Indian Tribe and provide a copy of this Plan to the Tribal Administration and the Tribal Council

on an annual basis, accompanied by a brief report summarizing the Department's accomplishments during the preceding year and issues that merit consideration by the Tribal Administration and the Tribal Council.

(d) *Appropriations and Funding.* This Ordinance authorizes such appropriations from tribal funds as the Tribal Council may from time to time provide. In addition, the Department is authorized to seek and obtain the funds necessary to support the Department's programs from all appropriate sources, and to establish a Cultural Resources Revenue Account pursuant to Section 204 of this Ordinance. Under the supervision of the fiscal accounting department of the Hualapai Tribe, the Director will manage and supervise the Department in the expenditure of funds to achieve its mission and carry programs under this ordinance.

Section 202. Director

(a) *Executive Direction.* The Department shall be supervised by the Director (hereinafter referred to as "Director" or "CRD Director"), who shall be hired and compensated in accordance with Hualapai Tribal Personnel Policies and Procedures. The Director shall report directly to the Hualapai Tribal Administration and Tribal Council.

(b) *Responsibilities.* The Director shall have the overall responsibility for carrying out this Ordinance. Specific responsibilities of the Director shall include, but not be limited to, the following:

(1) Serve as the Hualapai Tribal Preservation Officer for purposes of the National Historic Preservation Act;

(2) Serve as the agent of the Tribe for receiving notice to the Tribe in matters relating to cultural resources and, subject to other provisions of this Ordinance, for signing documents relating to cultural resources, *provided* that the Director shall consult with the Tribal Chairperson to determine whether the express approval of the Tribal Chairperson or the Tribal Council would be necessary or advisable for any particular document which the Director proposes to sign on behalf of the Tribe;

(3) Consult, coordinate, and negotiate agreements with other Hualapai tribal agencies and entities, including but not limited to the TERC, and with state agencies, federal agencies, and agencies of other Indian tribes regarding cultural resources;

(4) Serve as a representative of the Department and, if appropriate, the Tribe in any action in any court or any administrative proceeding involving the validity or enforcement of this Ordinance or involving other legal matters relating to cultural resources;

(5) Review undertakings and administer a permit program pursuant to Part 3 of this Ordinance;

(6) Develop, in consultation with the Advisory Team of Elders, plans and programs to protect and preserve the cultural resources of the Hualapai Tribe;

(7) Seek funding from appropriate sources and negotiate and administer grant and contractual agreements to ensure that the obligations assumed by the Department in such agreements are carried out;

(8) Establish a program to oversee the quality of cultural resources work carried out pursuant to permits issued under Part 3 of this Ordinance and to monitor the quality of

similar work carried out on Hualapai traditional use lands pursuant to permitting authority of other governmental agencies;

(9) Develop and maintain Departmental archives containing records, publications, and other material relating the cultural heritage of the Hualapai Tribe; and

(10) Develop and issue rules and other formal policy statements and guidance documents to carry out this Ordinance, in accordance with Section 208.

Section 203. Delegation of Authority

The Tribal Council hereby delegates to the Department and to the Director the authority necessary to carry out this Ordinance, subject to such review and oversight as the Tribal Council chooses to exercise.

Section 204. Cultural Resources Revenue Account

The Department is authorized, in cooperation with the fiscal accounting department of the Tribe, to establish a Cultural Resources Revenue Account. All revenue from sources such as contracts, cooperative agreements, and grants shall be deposited into this account for disposition in accordance with the terms of such contracts, cooperative agreements, and grants. Revenue from fees, fines, civil penalties, civil forfeitures and other sources under this Ordinance shall be deposited into this account and shall be expended in accordance with Hualapai Tribal budgetary procedures to help achieve the purposes of this Ordinance.

Section 205. Archaeological Services Branch

The Director is authorized to establish an Archaeological Services Branch within the Department to provide or arrange for archaeological services for other departments of tribal government, tribal enterprises, and the private sector, and to charge reasonable fees to cover the costs of providing such services. If, in the Director's judgment, it would be preferable for the Tribal Council to create a separate subdivision of tribal government or some other entity to provide archaeological services, the Director shall provide recommendations to the Tribal Council.

Section 206. Hualapai Tribal Museum

(a) The Director is authorized to develop plans to establish a Hualapai Tribal Museum. The Museum shall be established only after these plans have been developed and presented to the Tribal Council and when secure funding for the Museum's establishment and operation have been identified.

(b) There is hereby established a Museum Development Account into which funds raised for the purposes of development and operation of the Museum shall be deposited. These funds

shall remain available in this account until they are appropriated and expended for the purposes of developing and/or operating the Museum.

(c) Unless otherwise provided by the Tribal Council, the Museum shall be managed by a Curator-Manager, who shall report to the Director, in accordance with Hualapai tribal personnel policies and procedures.

Section 207. Advisory Team of Elders

(a) In carrying out their responsibilities under this Ordinance, the Director and the employees of the Department shall be guided by the wisdom and expertise of an Advisory Team of Elders.

(b) Upon enactment of this Ordinance the Director, in consultation with the members of the Interim Advisory Team of Elders described in paragraph (e) of this section, shall develop:

- (1) A Policy Statement on the Roles and Responsibilities of the Advisory Team of Elders; and
- (2) A Procedure for Appointments to the Advisory Team of Elders.

(c) In addition to such other roles and responsibilities as the Director determines are appropriate for the Advisory Team of Elders, this Team also shall perform a role similar to that performed by a State Review Board under regulations issued by the National Park Service regarding nominations of properties to the National Register of Historic Places. (36 C.F.R. parts 60, 61).

(d) The Policy Statement and Procedure for Appointments shall take effect upon approval by the Tribal Council.

(e) An initial Advisory Team of Elders was established by the Office of Cultural Resources in 1992, with concurrence of the Tribal Council, and this Team shall remain in effect until a new Team is appointed pursuant to the Policy Statement and Procedure for Appointments.

(f) The Policy Statement may include provisions for the payment of compensation to the members of the Advisory Team of Elders for their service to the Tribe in this capacity.

Section 208. Rulemaking and Other Policy Documents

(a) *Rulemaking Authority.* The Director is authorized to issue rules to carry out this Ordinance. For some provisions of this Ordinance, the issuance of rules is mandatory: the Ordinance expressly requires the Director to issue rules, and those provisions cannot be carried out until rules have been issued. In addition, the Director is authorized to issue rules to carry out other provisions of this Ordinance if, in the Director's judgment, rules would be advisable to help clarify the Ordinance and to provide guidance to the affected public.

(b) *Rulemaking Procedure.* The development of rules is intended to be a process in which persons whose interests will be affected by the rules have an opportunity to understand how the rules will affect their interests and to make their views known. The Director is responsible for ensuring that, unless the expedited procedure in paragraph (d) of this section applies, the following steps are taken:

(1) A proposed rule shall be made available to the public, including an explanation of the rule in plain language. A notice of the availability of the proposed rule shall be posted at the office of the Tribal Chairperson and may be published in local newspapers and mailed to persons known to be interested in the rule.

(2) A comment period of forty-five (45) days shall be provided during which interested persons may file written comments on the proposed rule.

(3) A final rule shall be made available to the public, which shall include a summary of comments received and a brief discussion of the Director's response to comments received, although the Director need not respond to every point raised in the comments. A notice of the availability of the final rule shall be posted at the office of the Tribal Chairperson.

(4) A final rule shall be placed on the agenda for a scheduled meeting of the Tribal Council and shall become effective upon approval by the Tribal Council or upon the Council taking no action on the rule for thirty (30) days after the first Council meeting for which the rule was included on the agenda, unless the Council otherwise provides through resolution.

(c) *Additional Procedures for Rulemaking.* The Director may use additional methods to inform the public and seek the views of concerned persons, such as informal community meetings and more formal public hearings. If the Council, through resolution or ordinance, imposes additional procedural requirements that clearly are intended to apply to rulemaking under this Ordinance, the Director shall comply with such requirements.

(d) *Procedures, Standards, Guidelines and Policy Statements.* The Director may develop, adopt, and carry out various kinds of policy and guidance documents other than rules that the Director deems necessary or advisable to carry out this Ordinance. Such document may include procedures, standards, guidelines and policy statements. Unless specifically required by this Ordinance or by other formal action of the Tribal Council, such documents generally do not require Tribal Council approval before taking effect. The Director shall provide a copy of any such document to the Tribal Council.

Section 209. Hearings

The Director is authorized to hold legislative hearings as part of the rulemaking process, administrative hearings on permit applications and appeals, and enforcement hearings on alleged violations of this Ordinance.

(a) *Rulemaking hearings.* In developing rules, the Director may hold a hearing in which Hualapai tribal members and others who may be affected by rules to be developed are given the opportunity to express their views. Notice of rule-making hearings shall be provided at least thirty (30) days prior to the date of the hearing and the text of the proposed rules, with explanatory materials, also shall be made available to the public at least thirty (30) days prior to the date of the hearing.

(b) *Administrative hearings.* When considering whether to approve an application for a permit pursuant to Part 3 of this Ordinance, the Director generally will make the initial decision based upon the written application. The Director is authorized to hold administrative hearings to gather information to be used in making the initial permit decision. The Director shall hold an administrative hearing when an affected party has requested review of a permit decision pursuant to Section 502 of this Ordinance. In an administrative hearing, the burden is on the applicant to demonstrate to the Director that the issuance of a permit would be consistent with the Ordinance and the Department's rules. A written transcript shall not be required, but the applicant shall be entitled to a written decision. The Director shall issue rules establishing procedures for administrative hearings.

Section 210. Public Meetings

The Director is authorized to hold public meetings whenever doing so would help carry out the policies of this Ordinance. Public meetings generally are less formal than public hearings and do not require the preparation of a transcript or other record. Public meetings can be used to encourage community involvement in the rulemaking process or to inform the public about the Hualapai cultural heritage resources program or for any other worthwhile purpose in the judgment of the Director.

PART 3. PROTECTION OF CULTURAL HERITAGE RESOURCES

Section 301. Hualapai Register of Heritage Places

(a) *Creation of the Register.* The Director shall create, expand, maintain and administer a Hualapai Tribal Register of Heritage Places (hereinafter referred to as the "Hualapai Register") comprising places, buildings, districts, objects, and structures significant in Hualapai history, culture, archaeology, engineering, and architecture. The Director shall issue rules to establish criteria for eligibility and procedures for determining eligibility and nominating places to be listed on the Hualapai Register. Eligibility for the Hualapai Register shall not be limited to places that are located on Hualapai Tribal lands but, rather, may also include places located on Hualapai traditional use lands.

(b) *Inventory, Evaluation, and Registration.* The Director shall establish a program to locate, inventory and evaluate cultural resources on Hualapai tribal lands and Hualapai traditional use lands. In accordance with rules issued pursuant to paragraph (a) of this Section, upon a determination that a place is eligible for the Hualapai Register, the Director may formally add the place to the Register or the Director may maintain a separate listing of places that have been determined eligible but have not been formally listed.

(c) *Advisory Team of Elders.* The rules issued by the Director pursuant to paragraph (b) shall include a procedure through which the Director shall consult with the Advisory Team of Elders in determining whether any particular place is eligible for the Hualapai Register and, if it is eligible, whether or not it should be formally listed. The consultations leading up to such determinations may be closed to the public if, in the judgment of the Director or the Advisory Team of Elders, confidentiality is advisable to protect the cultural resources at issue and the traditional uses of such resources by tribal members, *provided* that members of the Tribal Council and persons designated by them may participate in such consultations. In the event of a disagreement between the Director and the Advisory Team of Elders, the Director shall defer to the judgment of the Advisory Team of Elders and issue a determination for the Department .

(d) *Appeals.* A determination by the Director on the eligibility of a place for the Hualapai Register may be appealed pursuant to Section 503.

Section 302. National Register of Historic Places

(a) *Inventory, Evaluation, and Nomination.* The Director shall establish a program to locate, inventory and evaluate cultural resources on Hualapai tribal lands and Hualapai traditional use lands that appear to be eligible for the National Register of Historic Places, and to determine whether such properties should be formally nominated to the National Register. In establishing and carrying out this program, the Director shall consider (1) places that are eligible for ~~the~~ both the Hualapai Register and the National Register, and (2) places that are eligible for the National Register but which are not significant in Hualapai history, culture, archaeology, engineering, and architecture and thus are not eligible for the Hualapai Register.

(b) *Advisory Team of Elders.* The program established by the Director shall include a role for the Advisory Team of Elders similar to that performed by State Review Boards in regulations issued by the National Park Service governing nominations to the National Register (36 C.F.R. part 60).

(c) *Appeals.* Determinations by the Director to nominate a property to the National Register, or not to nominate a property, may be appealed to the Keeper of the National Register in accordance with regulations issued by the National Park Service (36 C.F.R. part 60). Such determinations shall *not* be subject to appeal or judicial review pursuant to Sections 503 and 504 of this Ordinance.

Section 303. Clearance Requirement for Undertakings

(a) *Clearance Requirement.* Before carrying out any undertaking that may affect cultural resources located on Hualapai tribal lands, the responsible agency official or responsible person proposing the undertaking must provide the Director with a reasonable opportunity to review the undertaking and determine the effects the undertaking is likely to have on cultural properties. The undertaking shall not proceed unless and until the Director has given the responsible agency official or responsible person written clearance to proceed. Such written clearance may include mitigation measures, which shall be binding on the responsible agency official or responsible person.

(b) *Relationship to Environmental Review Code.* If the undertaking constitutes "development" under the Hualapai Environmental Review Code, the responsible agency or responsible person proposing the undertaking must apply to the Tribal Environmental Review Commission (TERC) for a permit, pursuant to the requirements of the Environmental Review Code. The TERC will consult with the Director regarding the effects the undertaking is likely to have on cultural resources and will include in the permit any conditions required by the Director.

(c) *Discovery Situations for Development under a TERC Permit.* If cultural resources are discovered during the course of development pursuant to a TERC permit, the TERC will consult with the Director regarding such cultural resources and will include any modification to the permit required by the Director. Depending on the likely effects that the undertaking may have on such cultural resources, the TERC may consider suspending or revoking the permit, subject to the procedural protections of notice and hearing provided in Section 309 of this Ordinance and the judicial review provision of Section 503.

(d) *Procedure.* The Director is authorized to issue rules to carry out the consultation requirement of this Section. In these rules the Director may provide that certain kinds of activities that normally do not adversely affect cultural resources may be excluded from the clearance requirement or may be addressed through programmatic agreements with responsible agencies. In the absence of rules issued by the Director, the procedure for conducting this consultation shall follow the procedure set out in the regulations issued by the Advisory Council on Historic Preservation for the Section 106 consultation process under the National Historic Preservation Act (36 C.F.R. part 800), with the Director performing the role of the SHPO, *provided*, that, as provided in paragraph (a) of this Section, unless and until the Director issues

clearance, the responsible agency official or responsible person cannot lawfully proceed with an undertaking.

(e) *Relationship to Permit Requirements.* The clearance requirement established by this Section is in addition to any permit requirements pursuant to Section 305 of this Ordinance, or pursuant to the Hualapai Environmental Review Code, that may also apply. For many kinds of undertakings it may be necessary to obtain one or more permits under Section 305 in order to gather sufficient information to make final plans for the undertaking and/or to adequately mitigate adverse effects on cultural resources prior to seeking clearance from the Director for the undertaking itself.

(f) *Hearings and Appeals.* If the Director denies clearance for an undertaking, the person or agency proposing the undertaking may request a hearing pursuant to Section 502 of this Ordinance. Any final decision made by the Director is subject to judicial review pursuant to Section 503 of this Ordinance.

Section 304. Prohibited Activities

The prohibitions in this Section apply to cultural resources located on or within Hualapai Tribal lands.

(a) No person or agency shall carry out an undertaking without first obtaining clearance from the Director, or a permit from the Tribal Environmental Review Commission, as the case may be, pursuant to Section 303 of this Ordinance.

(b) No person shall disturb, take, excavate, remove, damage, destroy, desecrate or alter any cultural resource or conduct any investigation relating to any cultural resource, or make an exploratory excavation to determine the presence of any cultural resource without first obtaining a permit from the Director pursuant to this Ordinance, or a permit from the TERC, as the case may be, unless an exemption from the permit requirement applies.

(c) No person shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange or transport any cultural resource in violation of:

- (1) the prohibitions in paragraph (b) of this Section;
- (2) the conditions of any permit issued pursuant to tribal or federal law; or
- (3) any rule, ordinance or other provision of tribal or federal law in effect at the time of the prohibited conduct.

(d) No person shall conduct ethnological or archeological studies without first obtaining a permit pursuant to this Ordinance, unless an exemption applies.

(e) No person who is not a tribal member shall conduct historical, cultural or other research, oral or written, scientific or non-scientific, or make recordings of any kind, regardless of the technology used, without first obtaining a permit pursuant to this Ordinance.

(f) Any person who receives a letter of inquiry from the Director pursuant to Section 401 of this Ordinance shall respond truthfully within the time specified in such letter; any person who gives false information in response to a letter of inquiry is in itself a violation of this Ordinance.

Section 305. Permit Requirements

Any person, other than a person who is exempt from permit requirements by Section 306 of this Ordinance, proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate, or remove cultural resources or engage in ethnographic research, or to conduct any other activity that would otherwise be prohibited by Section 304, shall apply to the Director for a Hualapai Tribal Cultural Resources Permit, or to the TERC for a Development Permit, as the case may be. As provided in Section 308, the Director shall issue rules to establish permit application procedures.

Section 306. Exceptions and Waivers

(a) The prohibition against, and permit requirement for, visitation of cultural resources shall not apply to enrolled members of the Hualapai Tribe or to Hualapai tribal employees engaged in properly authorized official activities.

(b) The prohibition against, and permit requirement for, alteration, collection, disturbance, excavation or removal of cultural resources or for the conduct of ethnographic research does not apply to:

- (1) Hualapai tribal members engaging in activities directly related to the practice of traditional Hualapai religion or traditional cultural practices.
- (2) Tribal employees engaged in properly authorized official business, relating to cultural resource management approved in accordance with rules and/or guidance documents issued by the Director.

(c) The Director may waive otherwise applicable permit requirements on a case-by-case basis to allow access to cultural resources by traditional practitioners from other Indian tribes.

(d) The Director may waive otherwise applicable permit or clearance requirements on a case-by-case basis in the event of an emergency or natural disaster.

(e) *Persons Not Excepted.* Employees of federal or state agencies are not excepted from the permit requirement. In addition, persons serving as agents for the Hualapai Tribe who are not employees of the Tribe (such as consultants, advisors, and others who provide services under contract), are not exempt from the permit requirements of this Ordinance. Through the issuance of rules, the Director may establish expedited procedures for such persons to obtain permits.

Section 307. Classes of Permits

(a) There shall be four classes of permits.

(1) Class A permits shall be issued for activities involving casual visitation and inspection of cultural resources. Class A permits may also be issued to traditional practitioners who are members of other Indian tribes in the event that such persons choose to apply for a permit rather than to ask the Director for a waiver of the permit requirement.

(2) Class B permits shall be issued for cultural resources inventory activities involving no disturbance of the cultural resources.

(3) Class C permits shall be issued for cultural resources investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources. If expressly authorized, a Class C permit may allow the excavation of human remains. It is the intent of the Tribal Council that the issuance of a Class C permit will eliminate the need for tribal members and tribal employees to obtain a permit from the Bureau of Indian Affairs under the Archaeological Resources Protection Act (ARPA). In issuing rules to establish a program for issuing Class C permits, the Director shall ensure that the tribal permit program is adequate to eliminate, to the extent possible, the otherwise applicable requirement to obtain an ARPA permit and, to the extent that eliminating the ARPA permit requirement is not possible, to expedite compliance with the requirements of ARPA.

(4) Class D permits shall be issued for activities involving research into the cultural resources of the Hualapai Tribe, including ethnographic, historical, cultural or other research. Any form of recording that results from any such research must conform to the terms and conditions of a permit.

(b) Permits shall normally only be issued on a case-by-case basis, except that Indian preference firms may be granted blanket Class B permits. The Director may waive this requirement and issue blanket permits whenever he or she finds that the issuance of a blanket Class B permit would be in the best interests of the Hualapai Tribe.

(c) Permits normally shall not be issued for a period of more than twelve months, except when longer periods are required to allow for the completion of a single project. In rules for permit programs under this Ordinance, the Director is authorized to establish other categories in which a permit may be issued for a period of longer than twelve months.

Section 308. Permit Application Procedures

(a) *Rules.* The Director shall establish procedures for permit applications through the issuance of rules. When such rules have been adopted, the Director may issue a permit to any qualified person, subject to appropriate terms and conditions, and subject to the full payment of any permit fees assessed by the Director.

(b) *Fees*. The rules shall include an appropriate schedule of fees for the various classes of permits, and may provide for the Director to grant a waiver of fees in appropriate cases. The Director shall reconsider the fee schedule on a periodic basis, at least every three years, and may revise the schedule whenever in his or her judgment revisions are warranted, provided that any change in the fee schedule must be accomplished through rulemaking in accordance with Section 208.

(c) *Special Provisions for Class C Permits*. In issuing rules for Class C permits, the Director shall take into consideration the requirements for permits under the Archaeological Resources Protection Act (43 C.F.R. part 7, 25 C.F.R. part 262), in order to ensure that a tribal permit is adequate to eliminate the need for an ARPA permit to the extent possible and, in circumstances in which an ARPA permit is required, to expedite ARPA compliance.

(d) *Hearings and Appeals*. If an application for a permit is granted or denied without a hearing, the applicant or any interested person may request a hearing from the Director pursuant to Section 502. Final decisions made by the Director are subject to judicial review pursuant to Section 503.

(e) *Relationship to Environmental Review Code*. The issuance of any permit pursuant to this Ordinance shall not constitute "development" under the Hualapai Environmental Review Code and shall not require a development permit; rather, the issuance of a permit under this Ordinance, if required for a development project, will be required prior to the consideration of an application for a development permit by the Tribal Environmental Review Commission.

Section 309. Suspension and Revocation of Permits

(a) *Suspension or Revocation for Cause*.

(1) The Director may suspend a permit for cause upon determining that the permit holder has failed to meet a term or condition of the permit or has violated any prohibition of this Ordinance or the rules issued to carry out this Ordinance.

(2) The Director may revoke a permit for cause upon determining that:

- (A) The permit holder has failed to correct the situation that led to the suspension of the permit within the time specified in the notice of suspension;
- (B) The permit holder has been convicted of a criminal violation of this Ordinance or of other tribal or federal law in a matter directly related to the activities covered by the permit;
- (C) A civil penalty has been assessed against the permit holder pursuant to this Ordinance or pursuant to other tribal or federal law in a matter directly related to the activities covered by the permit; or

- (D) The permit holder has engaged in activities that would be grounds for the suspension of a permit, and the permit holder has previously had a permit suspended for cause.

(b) *Suspension or Revocation Without Fault.* The Director may suspend or revoke a permit for reasons not relating to the conduct of the permit holder upon determining that continuation of work under a permit would not be in the best interests of the Hualapai Tribe or would be in conflict with legal requirements or land management policies not in effect when the permit was issued. Such a suspension or revocation is made without liability to the Hualapai Tribe, its employees and agents. Such a suspension or revocation shall not prejudice the ability of the permit-holder to hold or obtain other permits.

(c) *Notice of Hearing.* The Director shall provide written notice to the permit holder of the suspension or revocation, the cause of the suspension or revocation and, in the case of a suspension, the requirements that must be met before the suspension will be lifted. The permit holder may request a hearing before the Director after issuance of the initial decision regarding the suspension or revocation. Such hearing shall be held within 30 days after receipt of the written request, or as soon thereafter as reasonably practical. The Director may affirm, modify or reverse his initial decision based upon the evidence presented at the hearing.

(d) *Effective Date.* Suspension of a permit shall be effective immediately unless a later date is specified in the notice of suspension. Revocation of a permit shall be effective 30 days after issuance of the notice of revocation, unless a later date is specified. If the permit holder requests a hearing, then: (1) an order of suspension shall remain in effect pending the final determination by the Director on appeal, unless the Director in his sole discretion orders otherwise; (2) an order of revocation, if upheld, shall be effective thirty (30) days after the final determination by the Director on appeal.

PART 4. ENFORCEMENT

Section 401. Investigations

The Director is authorized to investigate compliance with permits issued pursuant to this Ordinance and to investigate activities that are being carried out without a permit in possible violation of this Ordinance. As part of an investigation, the Director may serve any person with a letter of inquiry. Any such letter of inquiry shall inform the person to whom it is addressed that: answers must be provided to the Director within 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.

Section 402. Notices of Violation

(a) If the Director has reason to believe that a violation of this Ordinance has occurred, or is occurring, the Director is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation. If the apparent violation occurred, or is occurring, on land in which a person other than the alleged violator holds a property interest, a Notice of Violation shall also be issued to the holder of such an interest.

(b) A Notice of Violation shall include:

- (1) a concise statement of facts believed to constitute a violation;
- (2) specific reference(s) to the provision(s) of this Ordinance and/or the rules to carry out this Ordinance allegedly violated;
- (3) the proposed amount of a civil penalty pursuant to Section 406 of this Ordinance (possibly accompanied by a proposal to reduce or waive collection of the amount if the violator takes certain actions to mitigate damage) or a statement that a penalty may be assessed in an amount to be determined after further investigation;
- (4) a statement that the amount of the civil penalty may be doubled if the violation continues to occur after the Notice of Violation has been served on the alleged violator; and
- (5) an explanation of rights to petition for relief, request an administrative hearing, and seek judicial review of any final determination pursuant to Part 5 of this Ordinance.

(c) A Notice of Violation may include a Summons to appear before the Director at an enforcement hearing at a specified time and date. If such a Summons is included it shall advise the alleged violator that failure to appear will constitute a violation of this Ordinance, which may result in the imposition of civil penalties.

(d) A Notice of Violation may be served on an alleged violator by the Director or by an employee of the Department or, at the request of the Director, by a Tribal law enforcement officer.

(e) A Notice of Violation may be served on a permit holder before the Director issues a notice of suspension or revocation of a permit pursuant to Section 309.

Section 403. Cease and Desist Orders

(a) If the Director has reason to believe that an ongoing and continuing violation is occurring, or that there is a substantial likelihood that a violation will occur in the near future, the Director is authorized to petition the Tribal Court for a Cease and Desist Order to prevent the violation from continuing or occurring. The Director's petition shall include a brief statement of facts, according to the Director's information and belief, and a brief explanation of how the alleged facts, if true, constitute a violation of this Ordinance.

(b) The Tribal Court is authorized to issue a Cease and Desist Order upon a showing by the Director that:

- (1) probable cause exists that a violation is occurring, or is likely to occur in the near future; and
- (2) the violation has resulted in, or is likely to result in, damage to cultural resources.

(c) If the petition concerns a violation for which the Director has issued a Notice of Violation, a showing by the Director that the conduct has continued after the Notice of Violation was served on the alleged violator shall be sufficient to establish probable cause that a violation is occurring, or is likely to occur in the near future.

(d) The consideration by the Court of a petition by the Director for a Cease and Desist Order shall not require that notice of the hearing be provided to the alleged violator.

(e) A Cease and Desist Order shall include:

- (1) a concise statement of facts believed to constitute a violation of this Ordinance;
- (2) specific reference(s) to the provision(s) of this Ordinance and/or the rules to carry out this Ordinance allegedly violated;
- (3) a statement that the Tribal Court has determined that there is probable cause to believe that a violation has occurred or is likely to occur in the near future;
- (4) a statement that the alleged violator must Cease and Desist the conduct that constitutes a violation and that failure to comply with the Cease and Desist Order is in itself a violation of this Ordinance;
- (5) the proposed amount of a civil penalty pursuant to Section 406 of this Ordinance (possibly accompanied by a proposal to reduce or waive collection of the amount if the violator takes certain actions to mitigate damage) or a statement that a penalty may be assessed in an amount to be determined after further investigation;
- (6) a statement that the amount of the civil penalty may be tripled if the violation continues to occur after the Cease and Desist Order has been served on the alleged violator; and
- (7) an explanation of rights to petition for relief, request an administrative hearing, and seek judicial review of any final determination pursuant to Part 5 of this Ordinance.

(f) A Cease and Desist Order may be served on an alleged violator by the Director or by an employee of the Department or, at the request of the Director, by a Tribal law enforcement officer.

Section 404. Criminal Penalties

(a) *Tribal Criminal Penalties.* It is a criminal offense for an Indian person to violate any of the prohibitions of Section 304 of this Ordinance or to knowingly counsel, procure, solicit, or employ any other person to violate any of the prohibitions of Section 304. Upon conviction in Tribal Court, such a criminal offense may be punishable by restitution, community service, a fine not to exceed \$5,000, and/or imprisonment for a term not to exceed one year. For the purposes of this Ordinance, each act committed on Hualapai Tribal lands that constitutes a criminal offense shall be considered a separate offense. A person convicted of such an offense may also be subject to civil penalties.

(b) *Federal Criminal Penalties.* Any person who commits an act on Hualapai tribal lands that would be a criminal offense under this Ordinance if committed by an Indian may also be subject to criminal prosecution under federal law.

Section 405. Trespass

Any nonmember of the Hualapai Tribe who violates any prohibition in Section 304 of this Ordinance without having obtained the relevant permit has committed trespass. Nonmember Indians may be subject to prosecution in Tribal Court; non-Indians may be subject to civil actions in federal court; all persons may be subject to civil actions in Tribal Court for damages. 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.

Section 406. Civil Penalties

(a) *Conduct Subject to Civil Penalties.* Individuals who violate the prohibitions in Section 304 of this Ordinance shall be subject to civil penalties, which may be assessed by the Director, in accordance with rules adopted expressly for this purpose. A permit holder who engages in conduct that violates the terms and conditions of his or her permit is considered to violate the prohibitions in Section 304.

(b) *Procedure for Assessing Penalties.* Following the procedure set out in Section 208, the Director shall issue rules for the assessment of civil penalties. In developing these rules, the Director may draw upon the procedures used by the Department of the Interior for assessing civil penalties under the Archaeological Resources Protection Act (43 C.F.R. §§ 7.15, 7.16) and the Native American Graves Protection and Repatriation Act (43 C.F.R. § 10.12). At a minimum, the procedure shall include:

- (1) *Notice of Violation*, in accordance with Section 402 of this Ordinance;
- (2) *Response Period* of at least forty-five (45) days after service of the Notice (or service of the proposed penalty amount if not included in the Notice) for the alleged violator to respond to the Notice of Violation, during which the alleged violator may seek informal discussions with the Director or may file a Petition for Relief pursuant to Section 501;
- (3) *Assessment of Penalty*, by the Director after the expiration of the Response period or after consideration of a Petition for Relief, unless the Director determines that, based on all the available information, no violation has occurred;
- (4) *Notice of Assessment*, which shall be formal notification to the violator of the amount due, how to pay it, and appeal rights pursuant to Part 5 of this Ordinance.

(c) *Penalty Amounts*. Rules to carry out this Section shall include guidelines for the Director to use in assessing civil penalties. The Director shall take appropriate measures to inform the public regarding civil penalties under this Ordinance.

(1) For violations relating to failure to obtain Class A, B, or D permits, the civil penalty amounts may be set at relatively nominal amounts for first time offenders, but shall be at least comparable to the fees that would be charged for such permits. The rules shall provide for penalty amounts to be substantially increased for second and third offenses.

(2) With respect to Class C permits, the Director shall develop a system for determining penalty amounts that reflects consideration of the following factors:

- (A) Costs of restoration and repair of damaged cultural resources and the archaeological or commercial value of cultural resources that are destroyed or otherwise not recovered;
- (B) Enforcement and administrative costs associated with the assessment and collection of the civil penalty;
- (C) Cost of disposition of cultural resources, including as appropriate, cost of curation in perpetuity;
- (D) Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
- (E) Costs of any additional mitigation measures the Director deems appropriate to implement;
- (F) An amount based on the loss to the Tribe of the use of cultural resources for cultural and religious practices;
- (G) For any second offense, a factor allowing the total penalty amount to be doubled or tripled, in the Director's judgment depending upon the nature of the offense.
- (H) A factor allowing the total amount of the penalty to be doubled in the event that conduct constituting a violation continued after service of a Notice of Violation and tripled if such conduct continued after service of a Cease and Desist Order.

(c) *Referral to Federal Authorities for Civil Penalties*. In lieu of, or in addition to, imposing civil penalties under this Ordinance, the Director may refer matters to federal authorities. Any penalties collected by the federal government and paid to the Hualapai Tribe

(pursuant to 43 C.F.R. § 7.17(c)) shall be deposited in the Cultural Resources Revenue Account established pursuant to Section 204 of this Ordinance.

Section 407. 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 and/or Cease and Desist Order, the Officer is authorized to seize all items of personal property that apparently have been involved in the violation. Title to such property shall be deemed to vest in the Hualapai Tribe at the time of the commission of the unlawful activity, provided that the Director brings an action in Tribal Court to perfect the Tribe's title and the Tribal Court issues a ruling in favor of the Department. If the former owner is present at the time of seizure, the Officer shall obtain the necessary information to provide such person information on the procedure to seek the return of such property; if not present at the time of seizure, a notice shall be posted and other reasonable steps taken to provide notice to the former owner.

(b) *Action To Perfect the Department's Title in Seized Property.* The Director may file an action in Tribal Court seeking to perfect the Tribe's title to any personal property seized. Any such action shall be considered by the Tribal Court in accordance with Section 504 of this Ordinance. The former owner of seized property shall be referred to as a "claimant." If the Director fails to file such an action within 60 days after the date of seizure, the items of personal property that were seized shall be returned to the claimant. At any time that an action to perfect the Tribe's title in seized property is pending, the Director 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 Department..* Any forfeited property title to which has vested in the Tribe pursuant to an order of the Tribal Court shall be made available for the use of, or disposition by, the Department upon the expiration of the period for filing an appeal in Tribal Court of Appeals. At any time up until the property is made available for the use of the Department, the Director is authorized to return the property to the former owner if any and all civil penalties assessed against the former owner have been paid.

(d) *Seizure under Federal Law.* The Director is authorized to cooperate with federal officials with respect to the forfeiture of items of personal property in connection with violations of the Archaeological Resources Protection Act. Any such items that are transferred to the Tribe (pursuant to 43 C.F.R. § 7.17(c)) shall be made available for the use of, or disposition by, the Department.

(e) *Seizure of Cultural Resources.* Cultural resources located within Hualapai tribal lands are presumed to be the property of the Hualapai Tribe unless tribal customary law provides otherwise. Thus unless a person who has excavated or otherwise removed a cultural resource from its proper setting is the holder of a permit authorizing such action, a presumption arises that a violation of this Ordinance has occurred. In the event that a Tribal Law Enforcement Officer is present at the scene of any apparent violation of this Ordinance at which cultural resources have

been damaged, excavated, or removed from their proper settings, the Officer shall take appropriate steps to protect the cultural resources from further damage, which may include seizing the resources and holding them in police custody.

Section 408. Referrals to Federal and Other Authorities

When, in the judgment of the Director, it would serve the interests of the Hualapai Tribe, the Director is authorized to provide information to, and cooperate with, federal agencies, state agencies, and other Indian tribes in the enforcement of cultural resources laws within Hualapai Tribal lands and Hualapai traditional use lands.

Section 409. Civil Actions in Federal Court

When, in the judgment of the Director, 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 cultural resources, the Director 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 Director and the Tribal Chairperson both conclude that the matter is an emergency, the Chairperson is authorized to file such an action on behalf of the Tribe.

PART 5. APPEALS AND JUDICIAL REVIEW

Section 501. Petitions for Relief

A person who has been served with a Notice of Violation which includes a proposed civil penalty may file a Petition for Relief with the Director. The person filing such a Petition may request that no penalty be assessed 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) days of the date on which the Notice of Violation was served (or from the date that the penalty amount was proposed, if later). The Director's decision in response to a Petition for Relief shall be conveyed to the Petitioner in the Notice of Assessment issued pursuant to Section 406.

Section 502. Administrative Hearings

(a)*Hearings Before the Director.* The Director is authorized to conduct adjudicatory hearings regarding clearances under Section 303, permit applications under Section 308, suspensions or revocations of permits under Section 309, notices of violation under Section 402, and any other instances in which a hearing is authorized pursuant to this Ordinance or rules issued to implement this Ordinance. Departmental staff designated by the Director will assume responsibility for presenting the Department's case at the hearing. The Tribal Administration may provide legal counsel to assist Departmental staff and/or the Department may provide its own legal counsel. The person whose permit or actions are the subject of the hearing or who has requested the hearing may be represented by legal counsel at that person's own expense.

(b)*Appointment of a Hearing Officer.* In any hearing involving the assessment of a civil penalty, and in any other hearing in which the Department has a direct financial interest, any party to the hearing may require the appointment of a Hearing Officer to conduct the hearing and render a decision. In any other matter, any party may request the appointment of a Hearing Officer, but one will not be appointed as a matter of right. In any hearing in which a Hearing Officer conducts the hearing and renders the decision, the Director may participate in the hearing as a party. In any such case, the decision of the Hearing Officer shall constitute final agency action for the Department.

(d) *Rules.* The Director shall issue rules governing the conduct of administrative hearings. The rules shall specify the steps in the hearing process, identify who may request a hearing, establish notification requirements and time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements the Director determines are necessary to carry out the purposes of this section. In addition, these rules shall ensure that parties to hearings are afforded administrative due process, including:

- (1) notice of the time and place of the hearing;
- (2) an opportunity to present reasons in support of the ruling that the appellant seeks;
- (3) an unbiased tribunal; and
- (4) a written decision including reasons in support of the decision.

(e) *Coordination with Tribal Environmental Review Commission.* The Director shall consult with the Directors of other Departments of Tribal Government and with the Tribal Environmental Review Commission regarding the establishment of a unified procedure for the appointment of hearing officers and the conduct of administrative hearings. The Director shall submit a report on this issue to the Tribal Administration within one year of the date of enactment of this Ordinance.

Section 503. 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 under the rules promulgated pursuant to Section 502 of this Ordinance shall be entitled to review of the action in the Hualapai Tribal Court. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of notification 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 Director 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 appointment was made. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of notification of decision not to appoint a Hearing Officer or within thirty (30) days of the date on which the 60-day period for the appointment of a Hearing Officer expires. In such a case, any person who would be directly and adversely affected by a decision of the Director, or by the judicial modification or reversal of a decision by the Director, may file an appeal with the Tribal Court, in the event that the person entitled to a hearing does not file an appeal, within ten (10) days after the expiration of the time allowed for filing by a person originally entitled to a hearing. In the event the original party files an appeal, any person who could have appealed in his/her own right may participate in the appeal as an intervenor.

(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 questions of law on a *de novo* basis. The Court shall not set aside or reverse a decision of the Director 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;
- (4) deprived the appellant of any right guaranteed by Article IX of the Constitution of the Hualapai Indian Tribe; or
- (5) deprived the appellant of due process of law or other rights that the appellant may have under the Indian Civil Rights Act (25 U.S.C. 1301-1341).

(d) *Advisory Team of Elders.* In any case arising under this Ordinance, the Tribal Court may seek advice from the Advisory Team of Elders on questions relating to tribal cultural traditions.

(e) *Private Right of Action in Tribal Court.* In any case in which a person or governmental agency subject to this Ordinance, including an agency or instrumentality of the Tribe, has carried out an undertaking without first obtaining clearance from the Director pursuant to Section 303, and the Director has not initiated enforcement by issuing a Notice of Violation or by petitioning the Tribal Court for a Cease and Desist Order, any person who is directly and adversely affected by the violation of the Section 303 clearance requirement may file an action in Tribal Court seeking an Order to enjoin the undertaking and to compel the alleged violator to apply for and obtain clearance from the Director prior to resuming the undertaking. In any such case, the person filing the action shall bear the burden of showing, by a preponderance of the evidence, that a violation of Section 303 has occurred. If the Tribal Court determines that injunctive relief is warranted in such a case, and issues an appropriate Order, action taken by the Director on an application for clearance after the issuance of such an Order by the Tribal Court shall be subject to hearing and judicial review in the same manner as other determinations by the Director.

(f) *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 Constitution of the Hualapai Indian Tribe.

(g) *Tribal Court of Appeals.* A decision by the Tribal Court adjudicating a dispute arising under this Ordinance may be appealed to the Tribal Court of Appeals in accordance with such rules as that Court may prescribe.

Section 504. Actions To Perfect the Tribe's Title in Seized Property.

(a) *Action Filed by the Director.* The Director is authorized to file an action in Tribal Court to perfect the Tribe's title in any property that has been seized pursuant to Section 406 of this Ordinance. Any such action must be filed within 60 days from the date on which the seizure occurred.

(b) *Burden of Proof.* The Director bears the initial burden of establishing probable cause that any item of personal property seized was associated with or involved in unlawful activity. If the Director meets this initial burden, the claimant bears the burden of showing, by a preponderance of the evidence, that the item of personal property is not subject to forfeiture. This burden can be met by disproving probable cause or by establishing innocent ownership of the property.

(c) *Appeals.* A decision by the Tribal Court in a civil forfeiture action under this Ordinance may be appealed to the Tribal Court of Appeals in accordance with such rules as that Court may prescribe.

