

# The Yavapai-Apache Nation Environmental Code<sup>1</sup>

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<sup>1</sup> Enacted on September 12, 2019 by Resolution No. 166-19, as amended on March 19, 2020 by Resolution No. 58-20, and on May 9, 2024 by Resolution No. 91-24.

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## Title I – General Provisions

### Article I: Introduction

#### 1.01 – Authority

A. The Yavapai-Apache Nation has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of the Nation’s Tribal Members and over all other Persons on the lands within the exterior boundaries of the Nation’s Reservation lands as necessary to protect the natural environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation. Under the Constitution of the Yavapai-Apache Nation (“Constitution”), the legislative governing authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Council.

B. The Yavapai-Apache Tribal Council enacts and enforces this Environmental Code (herein “Environmental Code”) under its inherent civil legislative, adjudicative, and regulatory authority as a sovereign nation and under authority of the Constitution of the Yavapai-Apache Nation, Article I Jurisdiction, Article V, Subsections (a) to protect the health and welfare of the Nation, (e) to regulate the use of all lands within the Nation’s jurisdiction, (l) to regulate Hunting, Fishing, Camping, recreation, hiking, and all other related activities on all lands within the Nation’s jurisdiction, (t) to exclude Non-Members of the Nation from the Reservation, (u) to exercise civil jurisdiction over all Tribal Members and Non-Members to the fullest extent permitted by federal law, and (v) to enact ordinances necessary or incidental to the exercise of the Nation’s legislative powers. The Yavapai-Apache Tribal Council enacts this Environmental Code to regulate certain activities, as detailed in the Environmental Code Titles II-IX, within the Reservation to the fullest extent recognized under federal law. The Yavapai-Apache Tribal Council finds that Non-Members engaged in conduct or activity within the exterior boundaries of the Reservation under a lease agreement, contract, Permit, License, or through other contacts with the Nation have voluntarily and explicitly agreed to the jurisdiction of the Nation and are subject to regulation under the laws, ordinances, and regulations of the Nation. Furthermore, the Yavapai-Apache Tribal Council finds that the activities regulated by this Environmental Code, if left unregulated, pose an imminent threat to the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation.

## 1.02 – Findings

The Yavapai-Apache Tribal Council finds the following:

A. To the People of the Yavapai-Apache Nation, the Verde River (Tu cho n'Lii) and the environment and natural resources of the Verde Valley are important physical and spiritual anchors to their place in this world. When many of the Yavape' and Dilzhe'e Apache People of the Verde Valley and surrounding mountains were force marched to the concentration camp at San Carlos east of Phoenix in the brutal February weather of 1875 they knew that someday they would return to the Verde Valley and the River that carved it. Today, the animals and their habitat, and the plants, and fish, the air, the lands, and the waters of the Verde Valley are a vital part of the Yavapai-Apache Nation. As the primary food source for the Yavape' and Dilzhe'e Apache People of the Verde Valley for countless generations, plants and wildlife continue to be an essential aspect of Yavape' and Dilzhe'e Apache nutritional and spiritual health, and play a vital role in the preservation of the Yavape' and Dilzhe'e Apache traditional, cultural and religious values. The welfare of the Yavapai-Apache Nation, its Tribal Members, and others residing or working within the Reservation is dependent upon the protection, preservation, and sustainable management of the Yavapai-Apache Nation's air, land, water, wildlife, and natural resources.

B. The abuse and misuse of and the unregulated access to and use of the Nation's environmental and natural resources threatens to adversely impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation in the following ways:

i. Illegal dumping, improper Waste management, and uncontrolled disposal of Waste within the exterior boundaries of the Reservation may pose a threat to the environment and quality of life of Nation residents. Failure to control these problems may adversely affect the health and welfare of the Nation and its Tribal Members by contributing to land, water, and Air Pollution; to the production of flies, rodents and other pests; to the waste of limited and valued natural resources; to the deterioration of the Verde River; and to the general detriment of the natural environment of the Reservation.

ii. Improper use and storage of Pesticides and Toxic Chemicals may threaten the public, health, safety and welfare of the Nation and its Tribal Members; and may impact the economic welfare of the Yavapai-Apache Nation, its Tribal Members, and others residing or working within the Reservation.



iii. Air Pollutants, whether emitted on the Yavapai-Apache Nation or transported to the Reservation from off-Reservation sources, may adversely affect air quality on the Reservation; the health and wellbeing of the of the Yavapai-Apache Nation, its Tribal Members, and others residing or working within the Reservation; the economic security of the Nation; and the traditional way-of-life that Tribal Members have practiced since time immemorial.

iv. The Verde River and the species that depend on it are threatened by erosion, impacts from livestock grazing, tamarisk encroachment, and sedimentation. Flows in the Verde River have substantially declined, channel morphology has changed, and riparian vegetation has become less diverse in structure and species composition. Many riparian species of plants once found within the riparian conservation corridor of the Verde River that are of traditional and cultural value are rarely encountered today. Many of the places where the Yavape' and Dilzhe'e Apache People traditionally gathered cottonwood and willow for baskets or wild spinach for food are no longer present.

v. Unregulated development within the Reservation threatens to harm the health of the Yavapai-Apache Nation, its Tribal Members, and others residing or working within the Reservation, as well as the Nation's economic stability, land, air, water, and cultural and natural resources.

vi. Public Nuisances threaten to create, and threaten to continue to create, unsafe and unhealthy conditions that may harm the economic welfare, attractiveness, and community character of the Reservation and the health of the Yavapai-Apache Nation, its Tribal Members, and others residing or working within the Reservation.

vii. Reduced availability of Water Resources, stormwater runoff, well contamination, Pollution of Water Resources, Waste of Water, and damage to Water Resource Infrastructure and Irrigation Ditches may adversely impact the Verde River, water quality, the sustainability of the Nation's Water Resources, cultural traditions tied to water, and public and environmental health on the Reservation.

C. It is in the best interest of the Nation, its Tribal Members, and all Persons residing on the Reservation or otherwise coming within the exterior boundaries of the Reservation and the Nation's jurisdiction to establish and maintain a comprehensive Environmental Code that will address the problems described above in Title I, Article I, §1.02 (B) i-vii; that will protect the health, safety, and welfare of Tribal Members and all others residing on or entering onto the Reservation; and that will preserve the environment and ensure the sustainable management of the Nation's natural resources.

### 1.03 – Purpose

A. It is the intent and purpose of this Environmental Code to formalize and establish uniform requirements and procedures to safeguard the environment and natural resources of the Reservation in order to protect the public health, safety, and environment of the Reservation from the problems described in Section 1.02 (B) i-vii above; to protect the health and safety of all the individuals living and working within the Reservation; to protect the fundamental cultural, ceremonial, religious values of the Nation including, but not limited to, the deep cultural ties between the Nation and a flowing Verde River; and to ensure the cultural, social and economic stability of the Nation. The Environmental Code's provisions shall be liberally construed to facilitate the accomplishment of these purposes.

B. It is the specific intent of the Environmental Code to place the obligation of complying with the Environmental Code's requirements upon the Persons regulated by this Environmental Code. No provisions of the Environmental Code shall be construed to create or to form any basis for liability on the part of the Nation or its officers, employees, or agents for any alleged injury or damage arising from the adoption, administration, application, implementation, or enforcement of the Environmental Code.

### 1.04 – Scope

A. The Environmental Code shall apply to the following:

i. All Persons as defined in the Environmental Code, inclusive of all Persons within the exterior bounds of the Reservation.

ii. The Nation's Departments.

iii. All existing and proposed activities that take place within the exterior boundaries of the Reservation and that impact the Nation's environmental resources, including, but not limited to, the following:

1. The monitoring of air quality on the Reservation and Open Burning on the Reservation.

2. The management of the Verde River Riparian Conservation Corridor; the protection of the Reservation's wildlife and natural resources, including the Verde River; and the management of Hunting, Fishing, and Camping on the Reservation.

3. Illegal Dumping; the collection and management of Waste and Hazardous Waste on the Reservation; and the operation of Underground Storage Tanks.

4. The use, storage, and application of Pesticides and Toxic Chemicals on the Reservation.

5. The management and abatement of Public Nuisances on the Reservation.

6. Proposals for Land-Disturbing Activities on the Reservation that may have an impact on the Nation's environment or cultural and historical resources.

7. The management, conservation, and protection of the Nation's Water Resources and Water Resource Infrastructure.

B. Any Person within the exterior boundaries of the Reservation is subject to and must comply with the Environmental Code, any regulations issued hereunder by the Yavapai-Apache Tribal Council, and all the Nation's laws. All such Persons are subject to the Nation's sovereign power to exclude, as specified under the Constitution and Laws of the Nation, shall be deemed to have consented to the civil jurisdiction of the Nation and its courts, and shall be subject to civil prosecution, penalties, damages, and any other civil remedies imposed or assessed or awarded by the Nation and its courts for any violations of this Environmental Code. The Nation's Departments must comply with the Environmental Code, any regulations issued hereunder by the Yavapai-Apache Tribal Council, and all the Nation's laws.

#### 1.05 – Effective Date

A. Except as provided in Article I, §1.05(B), this Environmental Code is effective as of the day it is enacted by the Tribal Council. No provisions of this Environmental Code shall be construed to be retroactive.

B. All Tribal Members and Departments shall come into compliance with Title II, Permits Procedure, no later than the 180 days from the date this Amended Code is adopted into law by Tribal Council resolution.

#### 1.06 – Sovereign Immunity

A. Nothing in the Environmental Code, nor any action, inaction, or agreement of the Yavapai-Apache Environmental Protection Department (hereinafter "EPD"), shall be construed as, or is intended to be, a waiver or modification of the Nation's sovereign immunity, or a consent by the Nation to jurisdiction or

suit against it or its elected officials, officers, employees, representatives, or agents.

B. The EPD is hereby authorized to enter into such contracts as are authorized by the Tribal Council by resolution or otherwise under the Nation's Procurement Code, for the purpose of implementing or enforcing the Environmental Code, provided that any such contracts shall not include provisions waiving the sovereign rights or immunities of the Nation, or any Department, agency, entity, officer, elected official, employee, representative, or agent thereof unless such provisions have been reviewed by the Attorney General and approved by the Tribal Council upon the Attorney General's recommendation. Any ambiguities in such contracts shall not be construed to be a waiver of the sovereign rights or immunities of the Nation, or any Department, agency, entity, officer, elected official, employee, representative, or agent thereof.

## Article II: Delegated Authority

### 2.01 – General Powers and Duties of the EPD

The EPD shall be the Nation's lead agency charged with administering the Environmental Code, which includes implementing the Environmental Code pursuant to all powers and duties delegated to it and in partnership with other tribal departments and agencies as it sees fit or as may be required by law and policy of the Nation. The EPD is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity in any court or other tribunal.

### 2.02 – General Powers and Duties of the Attorney General Office

Where explicitly provided by individual Titles of the Environmental Code, the Office of the Attorney General may be designated as lead agency for implementation of such Titles. The Office of the Attorney General is designated as the lead agency for the enforcement of this Code in Tribal Court pursuant to Title X. The Attorney General is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity in any court or other tribunal, except as is authorized by the Tribal Council.

### 2.03 – Hearings

In administering the Environmental Code, the EPD shall allow public participation and schedule hearings as it deems appropriate. At least five business days prior to the public hearing, public notice shall be posted at the Yavapai-Apache Administration Office and other relevant locations describing the dates, times, and locations of all public hearings held pursuant to this

Environmental Code. The public notice shall also contain a concise description of the purpose of the hearing. At the hearing, the EPD may request public comments regarding the subject of the hearing.

#### 2.04 – Enforcement

The Yavapai-Apache Police Department (hereinafter “YAPD”) has the power to issue warnings and citations for violations of the Environmental Code, as specifically provided in Title X. The EPD is vested with authority over the pre-enforcement mechanisms provided in Title X, including, but not limited to, issuing warnings and overseeing the Cure Processes established under Title X.

#### 2.05 – Financial Management and Technical Assistance

A. All revenue collected from Environmental Code fines and Permits shall be deposited into the Nation’s General Fund.

B. The EPD is authorized to apply for Federal and state financial support, technical assistance, and training to implement the Environmental Code. All grant applications shall be filed in accordance with the Nation’s grants and contracting policies and procedures as approved by the Council from time to time.

#### 2.06 – Investigations

A. Upon receiving a written or verbal complaint from any Person that establishes reasonable grounds for an alleged violation of the Environmental Code, or upon its own initiative, the EPD, or the YAPD, may investigate the activities of any Person who is suspected of violating any provision of the Environmental Code or any Permit conditions. The EPD may investigate sites of possible pollution and suspected Code violations and take reasonable steps that the EPD finds necessary to ensure that Permit conditions and the provisions of the Environmental Code are being complied with by any Person.

B. The EPD may request that a Person disclose or make available for inspection and copying information, documents, or records, if the Person has or may have information, documents, or records relevant to the Person’s compliance with this Environmental Code.

C. The Attorney General, upon a request by the EPD or the YAPD, may petition the Tribal Court for an order requiring the Person to provide such information, documents, or records related to the suspected violation of the Environmental Code or for an order authorizing a Nation Department to enter into a Person’s place of business, operation, or facility and to inspect any books or records of

the Person that may be related to the suspected violation of the Environmental Code.

### Article III: Definitions of General Applicability

As used in the Environmental Code, the following terms shall have the following meaning:

**“Applicant”** means any Person or Nation Department applying for Nation approval to conduct an activity requiring a Permit, License, Environmental Review, Stormwater Management Plan, or other review process required under the Environmental Code.

**“Attorney General”** means the Attorney General and the Office of Attorney General of the Yavapai-Apache Nation.

**“Constitution”** means the Constitution of the Yavapai-Apache Nation, adopted March 7, 1992, and approved by the United States Department of Interior, Truxton Canon Agency of the Bureau of Indian Affairs on April 3, 1992.

**“Emergency Situation”** means any natural catastrophe or, regardless of cause, any fire, flood, or explosion, in any part of the Reservation, which in the determination of the Tribal Council causes damage of sufficient severity and magnitude to warrant intervention to alleviate the damage, loss, hardship, or suffering caused thereby.

**“Environmental Protection Department”** means the Yavapai-Apache Nation Environmental Protection Department, which is referred to in this Environmental Code as the “EPD”.

**“Development”** means the building of any structure or the making of any material change in the use or appearance of any structure.

**“Hazardous materials”** means any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by the Nation, the State of Arizona or the United States of America; or any substance that is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

**“Hazardous waste”** means a solid waste as defined in 40 CFR Part 261.3, that is not excluded from federal regulation as a hazardous waste under 40 CFR Part 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR Part 261.5.

**“Land-Disturbing Activity”** means any use of the land on the Reservation by any Person or Nation Department, including but not limited to residential, industrial, educational, governmental, or commercial Development, as defined in this Code, or highway and road construction and maintenance that results in a change in the natural cover or topography of the land or that may cause or contribute to sedimentation and erosion.

**“Nation Department”** or **“Department”** means any official tribal governmental department, program, or office established and vested with authority by the Yavapai-Apache Tribal Council.

**“Non-Member”** means a Person who is not an enrolled member of the Yavapai-Apache Nation.

**“Open Burning”** or **“Open Burn”** means the combustion of waste without control of combustion air to maintain adequate temperature for efficient combustion; without containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and without control of the emission of the combustion products.

**“Operator”** means any Person who operates, controls, maintains, or otherwise supervises a facility. Operator also means any Nation Department that operates, controls, maintains, or otherwise supervises a facility.

**“Owner”** means any Person who owns or leases all or part of a facility. Owner also means a Nation Department who owns or leases all or part of a facility.

**“Person”** means a natural Person, trust, firm, company, association, joint venture, partnership, society, political or economic subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, except that the term “Person” does not include the Yavapai-Apache Nation, the Yavapai-Apache Nation Tribal Council, or any Nation Department.

**“Public”** means tribal citizens and others who live or work within the Yavapai-Apache Reservation.

**“Reservation”** means all land beneficially owned by the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde Arizona and held in trust by the United States for the common benefit of the Nation and its Tribal Members.

**“Subordinate Economic Organization”** or **“SEO”** means an economic subdivision of the Yavapai Apache Nation established and vested with authority by the Yavapai-Apache Tribal Council.

**“Traditional Uses and Practices”** means those uses of the land and practices affecting the land that are a part of Yavapai-Apache Nation cultural and religious beliefs.

**“Tribal Council”** or **“Council”** means the Yavapai-Apache Tribal Council, the legislative body of the Yavapai-Apache Nation as defined under Article IV, Section 1 of the Nation’s Constitution.

**“Tribal Court”** means the Yavapai-Apache Nation’s Tribal Court, as established and empowered under Article VI of the Nation’s Constitution.

**“Tribal Member”** means a Person who is an enrolled member of the Yavapai-Apache Nation.

**“Yavapai-Apache Nation”** or **“Nation”** means the federally recognized Indian Tribe known as the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde Arizona.

**“Waste”** means all putrescible and non-putrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof, discarded home and industrial appliances, dead animals, manure, vegetable or animal solid and semisolid waste; but not including hazardous waste; solid or dissolved material in domestic sewage; liquid, solid, or semisolid waste from wastewater treatment plant, biosolids, effluent, solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to Permits under 33 U.S.C.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.

Other Terms may be defined throughout the Environmental Code within the text of the specific Titles where they occur.

## [Article IV: Indemnification and Proof of Insurance](#)

### 4.01 – Indemnification

Any Person who contracts with the Nation for services related to Pesticides or Toxic Chemical storage, use, or application; Waste and Hazardous Waste



disposal, storage, or collection; environmental review; the management and protection of Water Resources and Water Resource Infrastructure; the management of the Nation's natural resources; the regulation of air quality and Open Burning, or any other subject matter governed by this Environmental Code (the "Contractor") shall, as a material requirement of any such contract, indemnify the Nation, including its members, elected officials, officers, agents, or employees, and hold them harmless from any claims, liability, damages, costs, and expenses (including reasonable attorneys' fees and expenses) sustained or incurred by them to the extent arising directly or indirectly, in whole or in part, from the negligence, misconduct, or fraud of the contractor, its agents, affiliates, or employees in connection with this Environmental Code or services provided hereunder.

#### 4.02 – Proof of Insurance

A. All Persons, including contractors, vendors, or permittees, shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as required by applicable contracts between such Persons and the Yavapai-Apache Nation. Insurance requirements may include, but are not limited to, commercial general liability, automobile liability, workers' compensation, professional liability insurance, pollution liability insurance, and/or property insurance.

B. All Persons shall purchase and maintain the insurance required by this Environmental Code and/or any applicable contracts with the Nation from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the work to be conducted is located and with such financial rating as may be required by the Nation. Such Persons shall maintain the required insurance until the expiration of any applicable contract period, unless a different duration is stated in the contract.

#### Article V: Severance

If the provisions of the Environmental Code or any application of its provisions to any Person or circumstance, is held invalid by the Nation's Tribal Court, the application of such provision to other Persons or circumstances, and the remaining provisions of the Code, shall not be affected thereby.

## Title II – Permit Procedure

### Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

**“Burn Permit”** means a document issued by the Nation that gives authorization to a designated Person or Nation Department to conduct an Open Burn on the Reservation.

**“Hunting Permit”** means a document issued by the Nation that gives authorization to a designated Tribal Member to Archery Hunt on the Reservation.

**“Permit”** means a document issued by the Nation that gives authorization to a designated Person or Nation Department to carry out certain activities within the Reservation, pursuant to any limitations or conditions contained therein.

### Article II: Directives

#### 2.01 – Publicly Available Forms and Applications

A. The EPD shall make the Nation’s Permit applications publicly available to all prospective Applicants.

#### 2.02 – Fees

The EPD shall charge a reasonable fee for Permit applications. The EPD may charge an additional fee for the reactivation of a Permit which is suspended due to the fault of the Permit-holder. The EPD shall publish a fee schedule, subject to approval by the Tribal Council, for any fees established pursuant to this paragraph and make such fee schedule available to the Public during regular business hours.

#### 2.03 – Validation

No Permit shall be considered valid unless and until it is signed by an authorized representative of the EPD and the Applicant.

#### 2.04 – Permit Conditions

The EPD may place conditions on Permits as needed to protect the health, welfare, and economic security of the Nation, its Tribal Members, and the Nation’s natural resources. Such Permit conditions may include mitigation

measures recommended as a result of any Environmental Review conducted under Title III.

#### 2.05 – Denial or Revocation

A. The EPD may deny a Permit application if the EPD determines that the Applicant does not or will not meet the requirements of this Title.

B. The EPD may revoke any Permit upon determining that the holder thereof has violated or failed to comply with any applicable term, condition or provision of any certificate or Permit issued by the Nation or by any federal or state authority; has violated or failed to comply with this Title, or any other rule, regulation, or order of the Environmental Code; has operated within the Reservation in a careless or negligent manner; has made false, inaccurate or incomplete statements in written materials submitted to the Nation; is operating with improper or unsafe equipment; or has endangered the health and safety of workers or of Nation members. Any suspension or cancellation of a Permit shall take effect 10 days after written notice except in the event of the Tribal Council issuing an emergency order under Title X, Article VII, §7.01, in which case the suspension or cancellation shall occur concurrently with the issuance of the emergency order.

C. Revocation, suspension, expiration or other termination of any federal certificate, license or Permit required for an activity on the Reservation that is also Permitted by the EPD shall constitute automatic revocation of all Permits issued to the holder of the federal certificate, license or Permit, by the EPD, unless the EPD waives this provision in writing, after having obtained the written concurrence of the Attorney General and approval of Tribal Council for the issuance of the waiver.

D. If the EPD denies or revokes a Permit application, the Applicant may re-apply upon the Applicant's cure of the reason for denial or revocation.

E. The denial and revocation of Permits are final Nation determinations appealable to Tribal Court under Title X.

#### Article III: Procedure to Obtain a Waste Management or Pesticide Permit

##### 3.01 – Scope

This section shall apply to Applicants seeking Permits for the following uses: Waste Tire Storage Permits and Non-Restricted Use Pesticide Application Permits.

### 3.02 – Procedure

A. Applicants seeking to conduct an activity on the Reservation for which a Permit is required shall complete the applicable Permit application form and return it to the EPD.

B. If there is uncertainty regarding whether a Permit is required, the Applicant may request clarification in writing from the EPD.

C. The EPD's response to any inquiries submitted pursuant to Title II, Article III, §3.02 (B) shall be conveyed to the Applicant in writing within ten business days of the EPD's receipt of the inquiry.

D. Within ten business days of receiving an initial Permit application, the EPD shall inform the Applicant, in writing, of one of the following:

- i. The Permit application is approved and the EPD shall issue a Permit.
- ii. More information is required to complete or supplement the application before the EPD can make a determination of whether to issue a Permit.
- iii. The Permit application is denied.

E. In making its determination of whether to issue a Permit, the EPD may solicit input or comments from any Nation Department, or federal, state, or local governmental agency with relevant expertise.

### 3.03 – Process Where Additional or Supplemental Information Required

A. Where the EPD makes a determination under Title II, Article III, §3.02 (D) (ii) that more information is required, the Applicant will be responsible for accurately and fully providing the requested information to the EPD.

B. Within ten business days of receiving the supplemental information, the EPD shall either issue a Permit or inform the Applicant, in writing, that the Permit application is denied.

### 3.04 – Duration

All Permits issued by the EPD under this section shall be valid for one calendar year from date of issuance and may be renewed annually upon application to

the EPD, payment of any applicable fee, and satisfaction of all relevant requirements.

#### Article IV: Procedure to Obtain a Burn Permit

##### 4.01 – Scope

This section shall apply to the issuance of all Burn Permits on the Reservation.

##### 4.02 – Procedure

A. A Burn Permit application shall be submitted to the EPD at least four working days prior to the date that the open burn is to be commenced. The application shall be on the Burn Permit application form provided by the EPD.

B. Within 48 hours of receipt of a complete Burn Permit application submitted pursuant to this Section, the EPD will issue a Burn Permit if the EPD determines that the proposed Open Burning activity will not cause an adverse impact on Reservation air quality or otherwise endanger public health or welfare on the Reservation.

##### 4.03 – Notification to Local Fire Districts

A. The EPD shall provide the local fire district and YAPD with a copy of the Burn Permit within 24 hours of issuance, and no later than two working days prior to the commencement of the Open Burning activity.

B. On the same business day of the Open Burn and not less than two hours prior to the Permit holder commencing the Open Burning activity, the EPD shall notify the local fire district and the YAPD of the commencement of the Open Burning activity.

##### 4.04 – Duration

A Burn Permit shall be valid for the duration of the Open Burn as specified in the Burn Permit application and shall not be renewable.

#### Article V: Procedure to Obtain a Hunting Permit

##### 5.01 – Scope

A. This section shall apply to the issuance of all Hunting Permits on the Reservation to Tribal Members.

B. The issuance of Hunting Permits and the requirements therein shall conform with the most up-to-date Hunting Regulations promulgated by the Nation.

#### 5.02 – Procedure

A. A Hunting Permit application shall be submitted to the EPD at least fourteen (14) working days prior to first day of the applicable Hunting season. The application shall be on the Hunting Permit application form provided by the EPD.

B. Within ten (10) days of receipt of a complete Hunting Permit application submitted pursuant to this Section, the EPD will issue a Hunting Permit if the EPD determines (1) that the Applicant meets the qualifications for a Hunting Permit as specified in the Nation's Hunting Regulations and (2) that the issuance of a Hunting Permit will not cause an adverse impact on Reservation Wildlife populations or otherwise endanger public health or welfare on the Reservation.

#### 5.03 – Duration

A Hunting Permit shall be valid for one year.

## Title III – Environmental Review

### Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

**“Cultural Resource”** means any product of human activity, or any object or place given significance by human action or belief as determined by the Nation through its Cultural Resource experts.

**“Determination”** means a classification made by a Qualified Expert of the environmental impact of a proposed project following expert review of relevant information as mandated by this Title. A Determination may be any one of the following three classifications: “Determination of No Significant Impact;” “Determination of Mitigated Significant Impact” or a “Determination of Significant Impact.”

**“Environmental Review”** means the review process required by this Title.

**“NEPA”** or the **“National Environmental Policy Act”** means the federal National Environmental Policy Act codified at 42 U.S.C. § 4321 et seq.

**“Permanent Road”** means a permanent transport route designed to be traveled by motorized vehicles on the Reservation. Temporary access routes created by the Nation or Nation Departments are not Permanent Roads.

**“Qualified Expert”** means a Person with one of the following qualifications: (1) a Registered Professional Engineer or professional geologist with at least three years of experience conducting Environmental Review processes or equivalent review processes; (2) a Person who possesses a Bachelor of Science, or higher, degree in science or engineering and at least five years of experience conducting Environmental Review processes or equivalent review processes; or (3) a Person with ten years of experience conducting Environmental Review processes or equivalent review processes.

**“Significant”** as used in this Title has essentially the same meaning as under NEPA and requires considerations of both context and intensity as defined below:

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

rather than in the world as a whole. Both short and long-term effects are relevant.

**“Intensity”** means the severity of impact. The following should be considered in evaluating intensity:

i. Impacts that may be both beneficial and adverse. A Significant effect may exist even if the EPD believes that, on balance, the effect will be beneficial.

ii. The degree to which the proposed action affects public health or safety.

iii. Unique characteristics of the geographic area such as proximity to historic or Cultural Resources, park lands, prime farmlands, wetlands, rivers, or ecologically critical areas.

iv. The degree to which the effects on the quality of the natural environment are likely to be highly controversial.

v. The degree to which the possible effects on the natural environment are highly uncertain or involve unique or unknown risks.

vi. The degree to which the action may establish a precedent for future actions with Significant effects or represents a decision in principle about a future consideration.

vii. Whether the action is related to other actions with individually insignificant but cumulatively Significant Impacts. Significance exists if it is reasonable to anticipate a cumulatively Significant Impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

viii. The degree to which the action may adversely affect or cause loss or destruction of Significant scientific, cultural, or historical resources.

ix. The degree to which the action may adversely affect an Endangered Species, Threatened Species, or culturally important species or its habitat.

x. Whether the action threatens a violation of Federal or Tribal law, or requirements imposed for the protection of the environment.



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

## Article II: Directives

### 2.01 – Actions Subject to Environmental Review

A. Proposals to initiate the following activities will be subject to initial, and possibly full, Environmental Review:

- i. Land-Disturbing Activity, for any reason, if the Land-Disturbing Activity footprint will exceed 400 sq. feet.
- ii. Land-Disturbing Activity of any size within the Verde River Riparian Conservation Corridor.
- iii. Road construction of a Permanent Road or a Significant modification of an existing Permanent Road.
- iv. Proposed new commercial agricultural activities, including commercial livestock and agricultural activities on land not previously used for commercial agriculture.
- v. Land-Disturbing Activity that will impact any Cultural Resource on the Reservation, including, but not limited to the alteration of any building or structure of cultural significance to the Nation.
- vi. The proposed drilling of any new groundwater well on the Reservation.

### 2.02 – Exemptions

A. In the event of an Emergency Situation declared by the Nation, Land-Disturbing Activities that are directly related to the Emergency Situation shall be exempted from this Title. In the event that a Land-Disturbing Activity remains in place following the resolution of the Emergency Situation, the processes set forth in Title III, Article IV, §3.01 and §3.02 shall be followed. In such cases, initiation of the Initial Screening process set forth in Title III, Article IV, §3.01 shall begin no later than ten (10) days following resolution of the Emergency Situation.

B. Traditional Uses and Practices shall be exempt from any requirements under this Title.

C. Additions to existing homes within the Nation’s Housing development program inventory shall be exempt from requirements under this Title provided

that the total building footprint, inclusive of the addition, is fully contained within the existing lot lines of the home.

#### 2.03 – Cost of Conducting Environmental Review

A. Applicants other than Nation Departments shall be responsible for any applicable review fees, which shall always include a base fee and in addition, depending on the complexity of the Environmental Review document, may include fees for in-house legal review, third-party review, and any additional inspection fees:

- i. Base fee - \$100.
- ii. In-house legal fee to review the Environmental Review document: Number of hours x current attorney hourly rate.
- iii. Third-party Qualified Expert review fees at actual cost billed to Nation, including Nation's administrative costs.
- iv. Additional inspection as warranted to ensure Environmental Review document's compliance with this Code: Number of hours, including Nation staff and outside experts, x current hourly rate.

B. The total fee for Environmental Review shall be the sum of the above elements. Plan review fees shall be accrued until the Environmental Review process concludes. The Applicant shall pay accrued review fees regardless of what Determination results from the process.

C. Where a Nation Department is the Applicant, the cost of collecting and preparing any documentation and data related to an Environmental Review process shall be included in any project budget presented to Tribal Council.

#### 2.04 – Environmental Review Forms

EPD shall make the Nation's "Initial Screening Form," "Environmental Checklist," and any other forms pertaining to Environmental Review publicly accessible to prospective Applicants.

#### 2.05 – Utilization of Non-Tribal Environmental Review Mechanisms

A. If an Applicant is required to prepare either a federal Environmental Review pursuant to NEPA or any other federal law, or an equivalent, alternative review process under other laws, the provisions of this Title shall be deemed satisfied.

B. All Applicants whose proposals are subject to Environmental Review under federal law or through equivalent, alternative review processes must submit duplicate copies of all required documentation submitted as part of these federal or alternative processes to the EPD.

#### 2.06 – Compliance with Tribal and Federal Regulations

Compliance with this Title, including obtaining a Determination, shall not exempt an Applicant from any and all other applicable Tribal or federal regulations, including obtaining Tribal Council approval to commence a proposed Land-Disturbing Activity and obtaining a Registered Professional Engineer to complete any stormwater management planning processes required under Title IX, Article VII.

#### Article III: Environmental Review Procedure

##### 3.01 – Initial Screening

A. Any Applicant proposing a Land-Disturbing Activity on the Reservation shall complete the Nation’s Initial Screening Form and return it to the EPD.

B. If there is uncertainty regarding whether an activity requires completion of an Initial Screening Form, the Applicant may request clarification in writing from the EPD.

C. The EPD’s response to any inquiries submitted pursuant to Title III, Article IV, §3.01 (B) shall be conveyed to the Applicant in writing within ten (10) business days of the EPD’s receipt of the inquiry.

D. Within fifteen (15) business days of receiving the Initial Screening Form, the EPD shall inform the Applicant, in writing, of one of the following:

i. The proposed Land-Disturbing Activity’s impacts are minimal, the Initial Screening Form satisfies all Environmental Review requirements under this Title, and the Department has made a Determination of No Significant Impact. This does not exempt the Person from meeting any and all other applicable Tribal, local, state, or federal regulations.

ii. The proposed Land-Disturbing Activity’s impacts are Significant enough to require the completion of the YAN Environmental Checklist and the Applicant is obligated to follow the procedures set forth in Title III, Article III, §3.02.

iii. The proposed Land-Disturbing Activity is subject to review under NEPA or other federal law or other equivalent, alternative review

processes and is exempt from tribal Environmental Review pursuant to Title III, Article II, §2.05.

### 3.02 – YAN Environmental Review

A. Where the EPD informs the Applicant, pursuant to Title III, Article III, §3.01(D)(ii), that a proposed Land-Disturbing Activity has impacts Significant enough to require further analysis, the Applicant shall secure a Qualified Expert to conduct Environmental Review of the Land-Disturbing Activity's Impacts.

B. The Applicant, through its Qualified Expert, will be responsible for accurately and fully providing the information called for by the YAN Environmental Checklist.

C. The Applicant's Qualified Expert shall provide a written Determination of the proposed Land-Disturbing Activity's impacts, which should be informed by the completed YAN Environmental Checklist. This shall be one of the three following Determinations:

i. "Determination of No Significant Impact" means that the proposed Land-Disturbing Activity has no Significant adverse environmental impacts to the Reservation.

ii. "Determination of Mitigated Significant Impact" means that mitigation measures are required to reduce the proposed Land-Disturbing Activity's impact on the Reservation below the threshold of Significant adverse impacts.

iii. "Determination of Significant Impact" means that one or more of the following conditions have been identified in the course of its review:

1. Absent or insufficient information to perform a rigorous analysis of the potential environmental impacts.

2. Potential for Significant, adverse impacts that cannot be mitigated.

D. The Applicant shall provide the completed YAN Environmental Checklist and the Qualified Expert's Determination of the proposed Land Disturbing Activity's impacts to the Attorney General's Office and the EPD.

E. The Attorney General and the EPD shall convey the Determination of the proposed Land-Disturbing Activity's impacts to Tribal Council.

F. Applicants may work with the Nation and any relevant Departments to address any issues resulting in a “Determination of Mitigated Significant Impact” or a “Determination of Significant Impact” and may submit further analysis, alternatives, and considerations.

### 3.03 – Duration of a Determination

A. A Determination shall be valid for a period of two years, subject to any conditions of approval related to the timing of regulated activities on all or a portion of the Land-Disturbing Activity proposal site.

B. A Determination shall cease to be effective if the Applicant fails to comply with any condition of approval.

C. Where a Land-Disturbing Activity has not begun and the EPD finds that new information on environmental impacts has become available or circumstances relevant to the proposal’s environmental impacts have changed that were not considered in the initial Determination, the EPD may inform an Applicant that supplemental Environmental Review is required.

D. If any Significant changes to the proposed Land-Disturbing Activity occur at any time prior to project completion, the Applicant shall disclose these changes to the EPD in writing. The EPD shall issue a written opinion on whether supplemental Environmental Review is required within ten (10) business days of receiving an Applicant’s disclosure.

E. If supplemental Environmental Review is required pursuant to Title III, Article III, §3.03 (C) or (D), the Applicant shall comply with the procedures provided in Title III to supplement the existing Environmental Review. The Applicant shall provide all necessary information needed to allow the Nation to evaluate how new information or changed circumstances alters the proposed Land-Disturbing Activity’s environmental impact.

## Title IV – Public Nuisance

### Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

**“Abandoned Motor Vehicle”** means any motor vehicle that meets any of the following conditions,

- (1) a vehicle that is left for more than thirty (30) days on the Reservation and/or on the Nation’s public facilities such as roads, streets, alleys, highways, or public parking areas without blocking access or preventing use of such public facilities OR
- (2) a vehicle that is left blocking public access to or preventing full public use of the Nation’s public facilities such as roads, streets, alleys, highways, or public parking areas for more than twenty-four hours; OR
- (3) a vehicle that is left within the bounds of a private residence on the Reservation without the consent of the resident for a period of twenty-four hours or longer.

**"Collector and Hobby Vehicle"** means a motor vehicle that is either no longer manufactured or is produced in limited quantities or has other special and publicly recognized value that the owner keeps for the hobby purpose of preserving, restoring, and maintaining the vehicle.

**"Inoperable Motor Vehicle"** means any motor vehicle, except a Collector and Hobby Vehicle, which meets three (3) or more of the following conditions:

- (1) Has an expired license and/or registration;
- (2) Has one or more tires missing;
- (3) Has more than one broken window;
- (4) Is economically impracticable to restore to operating condition;
- (5) Has not moved under its own power for thirty (30) days;
- (6) Is missing an engine or has an inoperable engine;
- (7) Has had one or more flat tires for more than fourteen (14) consecutive days;
- (8) Due to its defective or obsolete condition, or in any other way, constitutes a threat to the public health and safety of the Nation and its inhabitants.

**“Public Nuisance”** is the maintenance on real property within the Reservation of one or more conditions which (i) unreasonably threaten the health or safety of the Public or neighboring land users; or, (ii) unreasonably and substantially

interfere with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property. Public Nuisance shall include, but not be limited to each of the following conditions:

- (1) The existence of any fence, gate, shed, porch, or other structure on property abutting or fronting upon any public street or sidewalk that is in a fallen, decayed, or other dilapidated or unsafe condition.
- (2) The existence of wrecked, junked, unserviceable or disassembled trailers, recreational vehicles, house trailers, boats, tractors, cars, trucks, or other vehicle, appliance, or machinery of any kind, or any major parts of any such vehicle, appliance, or machinery.
- (3) The existence in a place accessible to children of any property both attractive to and dangerous to children, including but not limited to any abandoned, broken, or neglected equipment, machinery, refrigerator, freezer, or other large appliances.
- (4) Buildings, structures, trailers, treehouses, or recreational vehicles that are abandoned, vandalized, partially destroyed, or permitted to remain in a state of partial construction or partial demolition in such a state as to both attract and be dangerous to children or adults.
- (5) The presence of Abandoned Motor Vehicles or Inoperable Motor Vehicles, as defined in Article I of this Title.

## Article II: Delegation of Responsibilities

### 2.01 – Powers and Duties of the Attorney General

The Office of the Attorney General is the Nation’s lead agency charged with the implementation of this Title on the Reservation, which include administering, and enforcing this Title pursuant to all powers and duties delegated to it and in partnership with other agencies of the Nation or Federal and State Governments, as it sees fit.

### 2.02 – Powers and Duties of the EPD

The EPD is the lead agency charged with the investigation of Public Nuisances on the Reservation, which includes initiating partnership with other departments and agencies as it sees fit to accomplish its investigations.

## 2.03 – Powers of Duties of the Housing Department

The Nation’s Housing Department (“Yavapai-Apache Nation Tribal Housing”) shall be informed of, and have the right to participate in, all investigations and determinations involving residences within the Nation’s Housing program. This Code shall be considered additive to, not in lieu of, Housing policies and regulations.

## Article III: Directives

### 3.01 – Complaints

A. Any Person living or working on the Reservation may submit a complaint regarding the presence of an alleged Public Nuisance occurring on the Reservation to the Attorney General. A Nation Department may submit a complaint regarding the presence of an alleged Public Nuisance occurring on the Reservation to the Attorney General.

B. Complaints must be made in writing and must provide sufficient specificity about location, duration, and nature of the alleged Public Nuisance to allow for an investigation.

C. The Attorney General will determine whether to request an investigation of the received complaint within thirty (30) business days.

### 3.02 – Investigations

Upon the Attorney General’s request, the EPD will investigate to determine whether the condition of the property that is the subject of the complaint constitutes a Public Nuisance as defined by this Title. If the condition of the property could be a serious health concern, the EPD may involve a health officer or other relevant tribal official in the investigation.

### 3.03 – Recommendation

A. Following the conclusion of an investigation, the EPD shall provide a written report and recommendation to the Attorney General. The EPD’s report shall include, at minimum, a description of the alleged Public Nuisance, a description of investigation activities undertaken, a list of all Nation Departments involved in the investigation, and whether the issuance of a Warning or Citation under Title X is recommended.



B. Within thirty business days of receiving the EPD's written report and recommendation, the Attorney General shall determine whether to advise EPD or YAPD to issue a Warning or Citation pursuant to Title X.

C. Within sixty (60) days of the Attorney General making a determination under Title IV, Article III, §3.03 (B), the Attorney General shall provide a written response to the complainant, informing them of the outcome of the complaint.

#### Article IV: Prohibitions and Liability

Any violation of the provisions listed in Title IV, Article IV, §4.01 – 4.02 shall result in the issuance of a Citation.

##### 4.01 – Prohibition on Public Nuisances

No Person shall permit, create, maintain, or allow, upon any premises, a Public Nuisance as defined in Title IV, Article I.

##### 4.02 – Prohibitions Specific to Vehicles

A. It shall be unlawful for any Person(s) to store within the Reservation any Abandoned Motor Vehicle or Inoperable Motor Vehicles as defined in Title IV, Article I. In addition to any other remedy provided in this Code, the Nation may abate Public Nuisance related to vehicles as provided in Title IV, Article V.

##### 4.03 – Successive Liability

Every successive owner, lessee or permittee of real property who neglects to abate a continuing Public Nuisance upon the property is liable in the same manner as the one who first created the Public Nuisance.

#### Article V: Abatement and Cost Recovery

In addition to the enforcement provisions of Title X, the following provisions shall govern the abatement of Public Nuisances and any associated cost recovery:

##### 5.01 – Abatement for Uncontested Citation

In the event of an uncured and uncontested Citation for violations of this Title, the Nation may take action to remove, demolish, or otherwise cure the Public Nuisance at the expense of the violator, who shall receive an invoice statement from the Nation summarizing the expenses incurred by the Nation in curing

the Public Nuisance and demanding payment of said expenses. Said expenses shall be collectible by the Nation in Tribal Court as a debt owed the Nation.

#### 5.02 – Abatement Following Judgment in Tribal Court on a Contested Citation

Following final judgement in Tribal Court, if the violator fails to abate the Public Nuisance within thirty (30) calendar days of the judgment in Tribal Court, the Nation may take action to abate the Public Nuisance, and the Person(s) subject to the violation will be held responsible for any costs associated with the abatement plus an administrative charge of two hundred dollars (\$200) and said combined amount shall be considered a debt owed to the Nation and shall be collectible through an action in Tribal Court. The Nation's abatement action may include, but is not limited to, removing, demolishing, and otherwise curing the Public Nuisance.

#### 5.03 – Abatement in the Case of Public Nuisance Caused by Vehicles

A. If the respondent fails to abate a Public Nuisance involving vehicles that are not blocking public access to or preventing public use of public facilities within thirty (30) calendar days of a final judgment in Tribal Court or within thirty (30) days of a Citation being posted on a vehicle whose owner cannot be identified or served as set forth in Title X, Article III, §3.02 (C), the Nation may abate Public Nuisance caused by vehicles by ordering such vehicles to be towed away and impounded at a designated location.

B. Any Person claiming a vehicle impounded pursuant to Title IV, Article V, §5.03 (A) within thirty (30) days of the impoundment shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within thirty (30) days of impoundment may be declared abandoned, advertised, and sold at auction, or disposed of by other means, by the EPD to pay for fines, towing, and storage charges. All remaining income from the sale of the vehicle shall be remitted back to the violator within ninety (90) calendar days of the Nation's receipt of the funds from the sale.

C. The Nation may immediately abate Public Nuisance involving vehicles that block access to or prevent public use of public facilities such as roads, streets, alleys, highways, or public parking areas by towing away or impounding such vehicles. Following such impoundment or towing, the directives set forth in Title IV, Article V, §5.01 – 5.03(B) shall be followed.

#### 5.04 – Cost Recovery

The Nation may recover any costs it incurs in abating a Public Nuisance by any legal means available, including, but not limited to obtaining a judgment against the property or levying against the assets of the property owner or

property resident. In addition, the Nation may levy upon the materials of buildings, fences, or other things that may be removed as a Public Nuisance, as a means of defraying some or all of the costs of removing the Public Nuisance. Nothing in this Title precludes the Nation from recovering any civil penalties assessed under Title X. If the recovered value of property forfeited or seized under this title exceeds the amount of fines and penalties, the difference shall be remitted back to the violator.

## Title V – Waste Management

### Article I: Definitions

As used in this Title V, the following terms shall have the following meaning:

**“Illegal Dumping”** means throwing, placing, dumping, pouring, emitting, emptying, spilling, or otherwise depositing Waste onto the surface of the ground, into a body or stream of water, or onto any site that is not designated by the Nation as a Waste depository. The burial of pets in the yard of a Tribal Member and the proper disposal of dead livestock by the Agricultural Resource Department shall not be considered illegal dumping, provided that (1) the dead animal is buried at a depth to cover it completely and protect it from disturbance by other animals and (2) the dead animal is buried more than 100 feet from the Verde River, Nation wells, springs, or any other body of water.

**“Recycling”** means the process of sorting, cleaning, treating, and reconstituting solid Waste or other discarded materials in order to prepare the altered form for use.

**“Resource Conservation and Recovery Act”** or **“RCRA”** means the federal Resource Conservation and Recovery Act, as amended, that is set forth at 42 U.S.C. § 69401 et seq.

**“Storage”** means the accumulation of Waste after generation and prior to and following collection, processing, composting, Recycling, transportation, or disposal.

**“Waste Tire”** means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer’s original specifications. Tires that are stored on the Reservation for a time not to exceed twelve months and used to construct buildings, walls, or other functional structures shall not be considered Waste Tires.

### Article II: Directives

#### 2.01 – Commercial Collection of Waste

A. The Nation’s Departments shall arrange for collection and hauling of Waste from the Nation’s buildings, residences, and facilities to a proper disposal facility. Consistent with the Nation’s Procurement Code, the Nation’s Departments may enter into contracts to fulfill these duties as needed.

B. The Utilities Department shall arrange for the collection and disposal of all Waste collected or generated at facilities operated by the Utilities Department.

#### 2.02 – Collection of Hazardous Waste

A. The Nation’s Departments shall arrange for collection and hauling of Hazardous Waste from the Nation’s buildings, residences, and facilities to a proper disposal facility. The Nation’s Departments may enter into contracts to fulfill these duties as needed.

B. The EPD may remove any Hazardous Waste, or any Waste that poses a danger to public or environmental health, which has been disposed of in violation of this ordinance, without prior notification to the violator.

#### 2.03 – Commercial Recycling

The Nation’s Departments shall arrange for collection and hauling, or other disposal of Recycling from the Nation’s buildings, residences, and facilities.

#### 2.04 – Illegal Dumping

A. The EPD shall utilize whatever reasonable monitoring and enforcement it finds necessary to control the problems associated with Waste outlined in Title I, Article I, §1.02 (B)(i), and to protect the Nation and its residents.

B. The EPD shall post notice of the Nation’s prohibitions on dumping Waste on the Reservation at areas that have been utilized for Illegal Dumping. Such notice shall include information about the civil penalties for Illegal Dumping.

C. When Waste or Hazardous Waste is Illegally Dumped, disposed of through illegal Open Burning, or otherwise deposited in violation of this Title and three or more items in the Waste or Hazardous Waste identify the same Person as owner or recipient, there shall be a rebuttable presumption that that Person is responsible for the Illegal Dumping or illegal Open Burning.

#### 2.05 – Waste Collection Outreach and Education

A. The EPD may establish guidelines to inform Nation residents and businesses about any relevant Waste collection best practices. The Nation’s departments shall coordinate with the any commercial operators collecting Waste or Recycling on the Nation to inform Nation residents and businesses of any guidelines pertaining to Waste collection at Nation residents and businesses.

B. The EPD shall post notice of any Department-sponsored Waste collection events occurring on the Reservation at least ten (10) business days in advance of the collection event. The EPD shall conduct sufficient outreach and education to inform Nation residents and businesses of any applicable rules, guidelines, or other information pertaining to Waste collection events occurring on the Reservation.

#### 2.06 – Underground Storage Tanks

A. The federal regulations found at 40 C.F.R Part 280 as of July 15, 2015 are hereby incorporated by reference as the Nation’s Underground Storage Tank regulations.

B. Any notifications, submittals, or reports required to be made to EPA pursuant to 40 C.F.R. Part 280 shall simultaneously be made to the EPD.

C. No Underground Storage Tanks shall be installed, used, or operated on the Reservation without written approval of the Tribal Council.

#### 2.07 – Waste Tire Collection, Handling, and Storage

A. The Owner or Operator of any location at which more than twenty-five (25) Waste Tires are collected, handled, or stored at any one time must comply with the following criteria:

- i. The Owner or Operator must remove Waste Tires to a Transfer Station for disposal within six (6) months from their initial storage date.
- ii. The Owner or Operator of the location where Waste Tires are held shall maintain compliance with all applicable Nation and federal laws.
- iii. The Owner or Operator shall maintain the site in a manner that prevents the breeding or harboring of insects and rodents or other pest vectors in or among the Waste Tires.
- iv. The Owner or Operator shall remove all excessive debris, liquid, and dirt from the Waste Tires before the Waste Tires are put into storage.
- v. The Owner or Operator shall control drainage of the location so that water is diverted away from the Waste Tires; run-off from Waste Tires is controlled; and water is not allowed to accumulate.
- vi. The Owner or Operator of the site shall obtain a Waste Tire Storage Permit from the EPD.

vii. The provisions of Title II shall govern the issuance of any Waste Tire Storage Permit required under Title V, Article II, §2.07 (A) (vi).

B. Waste Tires generated within the Reservation may be disposed of in the following manner:

- i. Waste Tires may be disposed of at an external Transfer Station.
- ii. Waste Tires may be taken to a permitted Waste Tire storage site on the Reservation, operating pursuant to Title V, Article II, §2.07 (A), for temporary storage not to exceed six months.
- iii. Waste Tires may be collected by a Nation-approved sub-contractor during bulk trash pickups in accordance with EPD policy.

### Article III: Prohibitions

Any violation of the provisions listed in Title V, Article III, §3.01 – 3.13 shall result in the issuance of a Citation.

#### 3.01 – Collection

No Person, other than those with a current contract with the Nation, shall engage in the commercial collection of Waste or Hazardous Waste on the Reservation.

#### 3.02 – Commercial Recycling

No Person, other than those with a current contract with the Nation, shall engage in commercial Recycling operations on the Reservation.

#### 3.03 – Illegal Dumping

No Person or Nation Department shall illegally dump any Waste or Hazardous Waste within the Reservation.

#### 3.04 – Open Burning

No Person or Nation Department shall cause Open Burning of any Waste within the exterior boundaries of the Reservation, except as permitted pursuant to Title II or as allowed under Title VII.

### 3.05 – Hazardous Waste

A. No Person or Nation Department shall construct or operate a Hazardous Waste disposal site within the exterior boundaries of the Reservation.

B. No Person or Nation Department may generate treat, store, dispose of, handle, manage, use, or re-use Hazardous Waste or used motor oil within the Reservation except in compliance with the Resource Conservation and Recovery Act (RCRA) federal regulations found at 40 C.F.R. Parts 260, 262, 263, 264, 265, 266, 273 and 279, which are hereby incorporated by this reference as part of this Title. For the purpose of this incorporation by reference, the term “EPD” shall be substituted for the term “Regional Administrator,” and “State Director.”

C. Any notifications, submittals, or reports required to be made to EPA under the above-incorporated federal regulations shall simultaneously be made to the EPD. In addition, if Hazardous Waste is generated within the Reservation, handled by a permitted facility within the Reservation, or exported from the Reservation, the generator of the Hazardous Waste must send a copy of the Hazardous Waste manifest (including the generator, transporter, and destination facility signatures) to the EPD within 45 days of the end of the month of shipment. The transporter(s) and the destination facility must send a copy of the completed Hazardous Waste manifest to the EPD within 30 days of the end of the month of shipment.

### 3.06 – Importing waste

A. No Person or Nation Department shall import and dispose of, or cause the importation and disposal of, significant quantities of any Waste or any Hazardous Waste generated outside of the Reservation to the Reservation. Small quantities of household Waste or Waste from Camping brought to the Reservation by Tribal Members shall not be considered a violation of this provision.

### 3.07 – Improper Storage of Waste

It is unlawful to store or accumulate Waste in a manner that is a hazard to the public health, safety, or the environment. The owner, agent, or occupant of any dwelling, residence, premises, or business establishment shall be responsible for the condition of said residence, premise, or business establishment, and for the safe storage and stockpiling of all Waste accumulated for appropriate collection. Waste shall be stored in durable, rust resistant, non-absorbent, water-tight, rodent proof, and easily cleanable containers, with a close fitting, insect-tight cover, or other container or method approved by the EPD.



### 3.08 – Transportation of Waste

No Person or Nation Department may transport Waste within the Reservation unless the Waste is covered, tied, or otherwise secured so Waste will not be blown or dropped from the transport vehicle. No Person or Nation Department may transport Hazardous Waste within the Reservation except in compliance with all applicable federal regulations, which are incorporated by reference into this Title.

### 3.09 – Biosolids

With the exception of the Yavapai-Apache Nation Utility Department and Agricultural Department, no Person or Nation Department may spray or spread Biosolids on the land surface, inject Biosolids below the land surface, or otherwise incorporate Biosolids into the soil. Biosolids generated by a duly permitted wastewater treatment facility may be spread and dried prior to use on the Reservation or prior to off-site disposal or sale.

### 3.10 – Landfills

No Person or Nation Department may construct or operate a landfill within the exterior boundaries of the Reservation, except by law or resolution issued by the Tribal Council.

### 3.11 – Underground Storage Tanks

A. No Person or Nation Department may install or operate any Underground Storage Tank or Underground Storage Tank system except in compliance with the federal regulations found at 40 C.F.R. Part 280 as of July 15, 2015.

B. No Underground Storage Tank shall be installed on the Reservation without Tribal Council approval.

### 3.12 – Waste Tire Prohibition

A. No Person or Nation Department may import Waste Tires from outside the Reservation boundaries for any purpose.

B. No Person or Nation Department may own or operate a facility that physically, chemically, or mechanically processes or alters Waste Tires.

C. No Person or Nation Department may collect, handle, or store more than 25 Waste Tires at the same location at one time, except Persons in possession of a Waste Tire Storage Permit issued pursuant to Title II.

### 3.13 – Defacement

No Person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted to assist in the enforcement of this Title.

## Title VI – Pesticide & Toxic Chemicals

### Article I: Definitions

As used in this Title, the following terms shall have the following meaning:

**“Application”** means the method by which Pesticides are delivered to their biological targets.

**“Certified Applicator”** means a Commercial Applicator or a Private Applicator, as defined in this Article, who has obtained the proper EPA-approved certifications to Apply Restricted Use Pesticides on the Reservation.

**“Commercial Applicator”** means an Applicator who uses or supervises the use of Restricted Use Pesticides on any property for compensation.

**“EPCRA Section 313”** means Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11023, 42 U.S.C. § 11023 et seq., as amended and as it may be amended from time to time hereafter.

**“FIFRA”** means the Federal Insecticide, Fungicide and Rodenticide Act of 1972, Public Law 92-516, Section 2, 86 Stat. 973 et seq., 7 USC §§ 136 et seq., as amended and as it may be amended from time to time hereafter.

**“General Use Pesticide”** means a Pesticide generally available to the public without a license and not classified by the EPA for restricted use as specified in 40 CFR 152.175.

**“Label”** means the written, printed, or graphic material on, or attached to, a Pesticide, Toxic Chemical, or any of its containers and wrapping.

**“Pest”** means any weed, insect, vertebrate, nematode, fungus, virus, bacteria or other pathogenic organism that is found in a location where its presence is undesirable and any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism that the EPD declares to be a Pest for the purpose of enforcing this Title.

**“Pesticide”** means any substance or mixture of substances intended to be used for (i) preventing, destroying, repelling or mitigating any Pest, or (ii) causing the leaves or foliage to drop from a plant or artificially accelerating the drying of plant tissue. Any substance or mixture of substances defined or designated as a Pesticide under FIFRA or tribal law shall be considered a Pesticide.

**“Pesticide Permittee”** means a Person who holds a Non-Restricted Use Pesticide Permit from the Nation.

**“Private Applicator”** means a Certified Applicator who uses or supervises the use of any Restricted Use Pesticide on property without compensation.

**“Restricted Use Pesticide” or “Restricted Pesticide”** means any Pesticide classified as a restricted use pesticide by the U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a(d) and identified as such or required to be identified as such by the Pesticide product itself.

**“Toxic Chemical”** means a substance on the list described in Section 313 (d) of EPCRA, 42 U.S.C. § 11023.

**“TRI”** means the Toxics Release Inventory established by EPCRA Section 313, 42 U.S.C. § 11023, 42 U.S.C. § 11023 et seq.

**“Worker Protection Standard”** means the Environmental Protection Agency Agricultural Worker Protection Standard codified under 40 CFR Part 170.

## Article II: Adoption by Reference

### 2.01 – FIFRA

FIFRA as defined in this Title, and including any amendments that may be in effect at the time of the occurrence of any activity regulated under this Title, is hereby adopted by reference and incorporated as part of this Title. If a provision of this Title is more stringent than a provision of FIFRA, Persons and Nation Departments shall comply with the more stringent provision of this Title.

### 2.02 – ITCA Agreement

On April 7, 2016, the Nation adopted Tribal Council Resolution No. 68-16 “Approving a Pesticide Program Inspection Agreement between the Yavapai-Apache Nation and the Inter-Tribal Council of Arizona.” Said Pesticide Program Agreement is hereby incorporated by reference as part of this Title.

### 2.03 – Worker Protection Standard

The United States Environmental Protection Agency’s (hereinafter “EPA”) Agricultural Worker Protection Standard codified under 40 C.F.R. Part 170 is hereby adopted by reference and incorporated into this Title.

## 2.04 – Toxics Release Inventory

A. Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) is hereby adopted by reference and incorporated into this Title. If a provision of this Title is more stringent than a provision of EPCRA Section § 313, Persons and Nation Departments shall comply with the more stringent provision of this Title.

B. The Nation takes notice of EPA Final Rule “Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments Under the TRI Program,” 40 C.F.R. § 372, 77 F.R. 23409, and designates the EPD as the contact for any reports submitted pursuant to EPCRA § 313.

## Article III – Authority of the EPD

### 3.01 – General Powers and Duties

A. The EPD is hereby designated as the Nation’s lead agency responsible for administering this Title and is authorized to exercise the delegated authority necessary for this purpose, including, but not limited to, the following:

- i. Monitoring compliance with this Title; conducting inspections, investigations, and sampling as necessary to implement this Title; and, in coordination with YAPD, enforcing this Title.
- ii. Proposing for Tribal Council adoption amendments to this Title and the Permit systems from time to time to reflect amendments to FIFRA, the Worker Protection Standard, and other information, experiences, or developments warranting the proposal of such amendments.
- iii. Proposing for Tribal Council adoption reasonably necessary regulations, policies, and procedures consistent with requirements under the Nation’s laws and federal law regarding Pesticide and Toxic Chemical use for the protection of the health, safety, and welfare of the Nation.
- iv. Issuing Permits under the provisions of this Title.
- v. Proposing Tribal Council imposition of emergency requirements regarding regulated activities as necessary to protect the health, safety, and welfare of the Nation against hazards posed by Pesticide usage. In suggesting such requirements, the EPD shall draw upon technically and scientifically credible data and information. If the EPD decides an Emergency Situation exists that requires an immediate action, including, but not limited to, the confiscation and quarantine of improperly or

misapplied Pesticides, the EPD may take such an emergency action. Immediately following any emergency action taken under this section, the EPD shall inform the Attorney General and Tribal Council of the action taken.

vi. Working cooperatively with federal, tribal, state, county and municipal government agencies, and private agencies, and Persons with technical expertise in the adoption and implementation of a Pesticide control program, including advising that Tribal Council enter into cooperative agreements with such other governmental agencies to better coordinate in regulating and controlling restricted Pesticides.

vii. Proposing Tribal Council designation of geographical areas, times, and circumstances where the Application, storage, transportation, and handling or other use of Pesticides shall be restricted or prohibited.

#### Article IV: Pesticide Permits and Certifications

##### 4.01 – Federal Pesticide Applicator Certification

A. All Persons and Nation Departments shall obtain the appropriate federal pesticide applicator certification before Applying any Restricted Use Pesticides on the Reservation. As detailed in 40 C.F.R. Part 171, this certification may be obtained pursuant to a federal plan for certification through the EPA; through an EPA-approved Nation applicator certification plan where such a plan is in effect; or through a state certification program, where the Nation has obtained all necessary agreements and EPA approval.

B. Applicators shall provide copies of all applications for a federal pesticide applicator certification and all certifications obtained from the EPA to the EPD.

##### 4.02 – Non-Restricted Use Pesticide Permit

A. Unless exempted under Title VI, Article IV, §4.02(B), all Persons and Nation Departments shall obtain a Non-Restricted Use Pesticide Permit from the EPD before engaging or offering to engage in any activity involving the storage or Application of any General Use Pesticide on the Reservation.

B. Title VI, Article IV, § 4.02 (A) shall not apply to the following:

i. Person(s) Applying General Use Pesticides on property where the Person(s) resides or operates a business, provided that this exemption shall not apply to schools, child care, elder care, food services, and medical facility businesses.

- ii. A Person who has obtained a valid and current federal pesticide applicator certification pursuant to Title VI, Article IV, § 4.01.
- iii. A Person who is contracting for Pesticide Application services with a Person who holds current and complete Permits and certifications required under this Title.
- iv. Applicators acting under authority of a tribal, federal, or state government agency or political subdivision thereof while in response to an Emergency Situation, provided that said agency provides written notice to the EPD in advance of the application that includes the reasons for the Emergency Situation and their plan for pesticide usage.

C. The provisions of Title II shall govern the issuance of Non-Restricted Use Pesticide Permits.

## Article V – Toxic Chemicals

### 5.01 – EPCRA Section 313 Facilities

A. It is of the utmost importance to the Tribal Council that the Nation and those who live and work within it are informed of and protected from the release of Toxic Chemicals.

B. The EPD shall monitor annual releases of toxic substances from all facilities subject to EPCRA Section 313 reporting that are located on or within ten miles of the Reservation. The EPD shall work directly with EPA to assess the impact of these releases on the Reservation.

C. If the EPD determines that the releases occurring from facilities subject to EPCRA Section 313 reporting pose a threat to the Nation, the EPD, in coordination with the Attorney General, shall bring this matter to the attention of Tribal Council, through a written report and presentation.

### 5.02 – Proposing Additions of EPCRA 313 Facilities

A. The EPD shall assess the threat that existing or new facilities operating on the Reservation pose with regard to a release of Toxic Chemicals.

B. In making the assessment directed under Title VI, Article V, §5.02(A), the EPD shall have the authority to request information about the use of Toxic Chemicals from the Owner or Operator of facilities operating on the Reservation including, but not limited to, requiring the facility to submit an inventory describing which chemicals, if any, included on the list described in Section 313 (d) of EPCRA, 42 U.S.C. 11023 are manufactured, processed, or otherwise

used by that facility and what amounts of such Toxic Chemicals are used, manufactured or processed.

C. If the EPD makes a request pursuant to Title VI, Article V, §5.02(B), the Owner or Operator of the facility shall provide the requested information within 30 days unless granted an extension in writing by the EPD.

D. If the EPD determines, in coordination with the Attorney General, that it is in the best interest of the Nation for a facility on the Reservation that is not currently covered by EPCRA Section 313 to be subject to EPCRA TRI reporting requirements, the EPD shall prepare a written recommendation to Tribal Council that the Nation requests EPA to apply EPCRA TRI reporting requirements to that facility.

E. The Tribal Council shall have final authority in determining whether to submit the request recommended under Title VI, Article V, § 5.02(D) to the EPA.

## Article VI – Directives

### 6.01 – Safeguarding Against Adverse Effects of Pesticides and Toxic Chemicals

A. It is the policy of the Nation that all Persons living and working on the Reservation shall be protected from the adverse effects of Pesticides and Toxic Chemicals.

B. At all times, Persons and Nation Departments Applying Pesticides or Toxic Chemicals or supervising the Application of Pesticides or Toxic Chemicals on the Reservation shall make maximum effort to protect themselves and those around them from harmful exposure to and direct contact with such substances.

C. All Persons and Nation Departments Applying or using Pesticides or Toxic Chemicals on the Reservation must utilize protective equipment that minimizes direct exposure with skin, airways, and eyes. Such precautions must include, at minimum, full compliance with the recommendation for protective equipment found on the Label of the Pesticide or Toxic Chemicals at issue.

D. A Certified Applicator or Pesticide Permittee working on the Reservation shall notify Nation schools, elder care, and child-care facilities at least seventy-two (72) hours prior to any Pesticide Application at any such facility.

E. The governing board of each Nation school and child-care facility shall develop a policy to provide pupils, employees, parents, and guardians with at



least forty-eight (48) hours of notice before Pesticides are applied on the premises of schools or child-care facilities.

F. Only Certified Applicators or Pesticide Permittees shall Apply Pesticides, including General Use Pesticides, in schools, child-care, elder care, food services, and medical facilities on the Reservation.

#### 6.02 – Farm Worker Safety

A. Employers (the Term “Employers” in this provision including the Nation, its Departments, and any contractor with the Nation) must provide training on Pesticide safety to all workers and handlers who will enter an agricultural field treated with Pesticides within the past thirty (30) days or a field that has been under a restricted entry interval (or “REI”) within the last thirty (30) days. This training must include a verbal explanation of the Farmworker Safety rights guaranteed under this Title and available remedies.

B. Employers must inform workers about where and when Pesticides were sprayed or applied to avoid accidental exposures. Employers must post information about recent Pesticide Application (including name of the Pesticide, location of agricultural field, applicable REIs, and Safety Data Sheets) in an easily accessible central location and must provide this information in English and Spanish.

C. Employers must provide sufficient water, soap, and towels for employees to wash their hands on a regular basis and to wash themselves in case of an accidental exposure to pesticides. Employers must provide an emergency eye-wash kit on site in a location immediately accessible to all employees.

D. If a worker becomes ill due to Pesticide exposure, the Employer must promptly make available transportation (which can include calling an emergency response vehicle) to a medical facility. An Employer must provide information about the Pesticide to which the Person may have been exposed to the injured worker or treating medical personnel.

#### 6.03 – Notice and Records

A. All Pesticide Permittees and Certified Applicators must provide written notification via fax, email, or hand delivery to the EPD at least twenty-four (24) hours in advance of the Application of Restricted Use Pesticides. This notice shall include, but is not limited to, the date and approximate time the Application will take place, the specific Pesticide by trade name, and the location of the planned Application. A copy of any forms mandated by federal law to be provided to the EPA must also be provided to the EPD.

B. Immediately following a Pesticide Application in a residence, building, commercial development, or school, except for Applications exempt under Title VI, Article IV, §4.02(B), the Certified Applicator or Pesticide Permittee shall provide a written notice to the customer authorizing the Application containing the following information: name and address of the customer; location where the Pesticide was Applied; date of Application; trade name of Pesticide Applied; and if applicable, EPA registration number of Restricted Use Pesticide Applied; amount of Pesticide Applied, expressed in terms of percent active ingredient and volume of diluted mixture; name and certification number of Certified Applicator, if applicable; and the following statement, which shall be placed in a publicly available location, printed in at-least a twelve point font **“WARNING – Pesticides can be harmful. Keep children and pets away from applications for [minimum time recommended by Pesticide Label] after [Date of Application]. For more information, contact [Applicators name and certification number] at [Applicator’s telephone number].”**

C. Each Certified Applicator who applies or otherwise uses Restricted Use Pesticides shall keep a record of each property treated and, upon request by the EPD shall furnish copies of said records to the EPD. Such records shall be kept by such Certified Applicator for a period of two years unless a longer period is specified by the EPD, and shall contain the name and address of the property owner; type and strength of Pesticide Applied; a description of the method by which such Pesticide was Applied; the name and address of the Person or firm where the Pesticide was purchased; the address of the Person Applying the Pesticide; the date, month, year, and time of day of the Application, the direction and estimated velocity of the wind at the time of Application and description of the principal equipment used in the Application; the name and address of the Person or Persons who disposed of the Pesticide containers, the type of container and the manner and location in which the containers were disposed of.

#### 6.04 – Spills

A. All Persons and Nation Departments must notify the EPD whenever a reasonable Person would think that a spill of Pesticides or Toxic Chemicals may present a hazard to humans or the environment within the Reservation. This shall include, but is not limited to, spillage of one gallon or more of Pesticide or Toxic Chemical in concentrated form or the spillage of five gallons or more of a diluted Pesticide or Toxic Chemical.

B. Excess quantities of Pesticide and Toxic Chemicals; Pesticide and Toxic Chemical Waste generated during clean-up or spill events; and Pesticide and Toxic chemical containers are considered Waste, which may be either a Waste or Hazardous Waste.

C. All Persons and Nation Departments shall take maximum precaution in managing Pesticide or Toxic Chemical Waste created by spills until the Nation can arrange for the transportation of the Waste off the Reservation for reuse, Recycling, disposal, or other approved method.

#### Article VII: Prohibitions

Any violation of the provisions listed in Title VI, Article VII, §7.01 – 7.04 will result in the issuance of a Citation.

##### 7.01 – Application of Pesticides and Toxic Chemicals

A. No Person or Nation Department shall Apply or otherwise use any Pesticide within the Reservation unless that Person has all required Permits.

B. No Person or Nation Department shall Apply or otherwise use any Pesticide on the Reservation unless the Pesticide is properly and currently registered pursuant to both the FIFRA and the Nation's Environmental Code.

C. No Person or Nation Department shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, shop, transport, handle, store, Apply or otherwise use, or dispose of any Pesticide or Toxic Chemical within the Reservation if such activity would be prohibited by FIFRA or the Nation's Environmental Code, or any regulation or order issued pursuant thereto.

D. No Person or Nation Department shall Apply or use a Pesticide or Toxic Chemical except in accordance with its Label and Labeling instructions, including, but not limited to the use of personal protective clothing and equipment. A Person shall not use or instruct another to apply or use a Pesticide or Toxic Chemical in a manner inconsistent with its Label.

E. No Person or Nation Department except those permitted by the EPD shall Apply Pesticides in schools, child-care, elder care, food services, and medical facilities on the Reservation.

##### 7.02 – Drift, Aerial Application, and Worker Exposure

A. No Person or Nation Department Applying a Pesticide or Toxic Chemical shall allow the Pesticide to drift onto a non-target area that will cause contact with any Person or damage to the environment.

B. Ground Applications are prohibited whenever the constant wind velocity exceeds ten (10) mph at the nozzle height of the application device.

C. The aerial Application (application by aircraft) of Pesticides and Toxic Chemicals shall not be permitted on the Reservation.

D. No worker may enter an area where a Pesticide has been Applied within the last thirty (30) days without receiving a full safety training as provided under Title VI, Article VI, § 6.02.

E. No employees under the age of sixteen, agricultural workers under the age of sixteen, or workers on the Reservation under the age of sixteen shall be allowed to handle, Apply, or manage the disposal of Pesticides or Toxic Chemicals on the Reservation.

#### 7.03 – Storage and Transport

A. Persons and Nation Departments shall store Pesticides or Toxic Chemicals according to applicable Label instructions.

B. Persons and Nation Departments shall store all Pesticides and Toxic Chemicals in a storage structure that meets the following requirements:

- i. Is secure from unauthorized entry.
- ii. Is secure from rain and protected from direct sunlight.
- iii. Has sufficient ventilation to prevent build-up of substance odors and gases.
- iv. Has emergency eyewash bottles and a first aid kit suitable to treat injury from the type of Pesticide or Toxic Chemical stored.
- v. Has posted emergency medical information that includes the telephone number of the nearest poison control center.
- vi. Has an operational fire extinguisher.
- vii. Has a conspicuously placed sign in the entrance stating that Pesticides or Toxic Chemicals are stored within the building.

C. If a Person or Nation Department stores or transports a Pesticide or Toxic Chemical in a service container, a durable and legible tag must be placed on the service container that lists the brand or trade name of the pesticide or toxic chemical, the EPA registration number, the name and percentage of the active ingredient, the EPA-assigned signal word, and the phrase **“KEEP OUT OF REACH OF CHILDREN.”**

D. All openings on service containers and portable application equipment containing Pesticides and Toxic Chemicals shall be equipped with covers that prevent splashes and spills.

E. All Pesticides and Toxic Chemicals transported by vehicle shall be transported in a manner to prevent spillage or leakage of substances.

#### 7.04 – Defacement

No Person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted to assist in the enforcement of this Title.

## Title VII – Air Quality

### Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

**“Air Pollutant”** means any Air Pollution agent or combination of such agents including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the Ambient Air.

**“Air Pollution”** means the presence in the ambient air of one or more Air Pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the Ambient Air.

**“Ambient Air”** means the portion of the atmosphere, external to buildings, to which the Public has access.

**“Burn Ban”** means the period of time when any Open Burning on the Reservation is prohibited.

**“Clean Air Act”** means 42 U.S.C. § 7401 *et seq.*, as amended.

**“Extinguished”** means there is no visible smoke from a burn area and the burn pile is cool enough for human touch.

**“National Ambient Air Quality Standard” or “NAAQS”** means the ambient Air Pollutant concentration limits established by the United States Environmental Protection Agency pursuant to § 109 (42 U.S.C. § 7409) of the Clean Air Act.

### Article II: Directives

#### 2.01 – Monitoring Program

A. Subject to available funding, the EPD shall establish a robust program to monitor air quality and Air Pollution within the Reservation. This program shall enable the Nation to productively engage around activities that may result in adverse impacts on air quality on and around the Reservation. The EPD shall manage its air quality monitoring program to ensure that the Tribe’s Airshed,

as recognized and protected under the federal Clean Air Act, is protected and preserved, and that off-Reservation sources of Air Pollutants do not adversely affect air quality on the Reservation.

B. The EPD may engage in the following activities related to its monitoring program.

- i. Compile and review historical data on the air quality within and around the Reservation; develop a format for an air quality inventory; and enter data of acceptable quality into that inventory.
- ii. Determine gaps in existing data and create an air quality monitoring program, including recommendations to the Tribal Council about whether to apply for special designations or programs available to Tribes under the federal Clean Air Act.
- iii. Oversee field collection and laboratory analysis of samples and reporting of air quality data.
- iv. Compile a Standard Operating Procedures manual for air quality monitoring procedures and a Quality Assurance Project Plan that outlines the Quality Assurance/Quality Control requirements for collecting and analyzing air quality data.
- v. Obtain and operate appropriate devices or systems necessary to monitor, compile, and analyze the quality of the Reservation's Ambient Air and determine whether that quality attains the National Ambient Air Quality Standards prescribed in the Federal Clean Air Act.

C. The EPD's monitoring shall include, but shall not be limited to, monitoring the impact of emissions from on and off-Reservation sources. Monitoring and analysis activities shall be performed in accordance with EPA's Quality Assurance/Quality Control guidance.

### Article III: Burning on the Reservation

#### 3.01 – Burn Permits

A. Except as provided in Title VII, Article III §3.02, all Persons and Nation Departments engaging in an Open Burning activity shall obtain a Burn Permit from the EPD.

B. The provisions of Title II, Article IV shall govern the issuance of Burn Permits.

### 3.02 – Exemptions to Burn Permit Requirements

A. The general prohibition on Open Burning in Title VII, Article IV, §4.01 and the permitting requirements of Title VII, Article III, §3.01 shall not apply to burning by a Tribal Member for cultural, traditional, or spiritual purposes provided that such burning:

- i. Is conducted in a safe manner and does not endanger public health or safety on the Reservation.
- ii. Does not contain any materials prohibited under this Title.
- iii. Is not subject to a Burn Ban.
- iv. Is Extinguished when the burn is complete.

B. The general prohibition on Open Burning in Title VII, Article IV, §4.01 and the permitting requirements of Title VII, Article III, §3.01 shall not apply to an Open Burning activity that is less than three feet in diameter and less than three feet in height (3x3x3) or an underground cook pit of less than eight feet by five feet (8x5), so long as such Open Burning activity:

- i. Is attended at all times.
- ii. Burns only materials that have been kept as dry as practicable.
- iii. Burns only materials that have been separated from non-combustible materials as much as practicable.
- iv. Is capable of being immediately Extinguished.
- v. Is not allowed to smolder.
- vi. Is Extinguished when the burn is complete.
- vii. Is contained underground or within a fire ring, barbeque, barrel, or similar structure.
- viii. Does not contain any materials prohibited under Title VII, Article IV, § 4.02.



### 3.03 – Open Burning Notification, Attendance, and Inspection

- A. All Persons and Nation Departments engaging in an Open Burn pursuant to a Burn Permit issued under Title II, Article IV, shall comply with any request by the EPD, Wildland Fire, or YAPD to inspect the Open Burning site prior to ignition.
- B. In the event that the permitted activity involves burning of a structure on the Reservation, a representative from the EPD or Wildland Fire, YAPD must be present during the burn.
- C. The Burn Permit holder must attend the Open Burn at all times and must fully extinguish the Open Burn when the Open Burn is complete.

### 3.04 – Burn Bans

- A. The Tribal Council may declare a Burn Ban if, in their best judgment, or in consultation with the EPD, Wildland Fire, federal, state or local officials, it determines that a Burn Ban is necessary to protect air quality on the Reservation or to protect life, property and the natural environment from fire hazards for any of the following reasons:
  - i. Measured or predicted concentrations of any Air Pollutant in the Ambient Air on the Reservation exceed any of the NAAQS.
  - ii. Meteorological conditions indicate impaired air quality conditions on the Reservation.
  - iii. Moisture levels in biomass on the Reservation indicate a high fire danger.
  - iv. Meteorological conditions indicate high winds that increase the risk of wildfires due to high fire danger.
- B. The Tribal Council may limit the geographical scope of a Burn Ban to areas on the Reservation where air quality is impaired or there is a high fire danger.
- C. The EPD shall provide notice of a Burn Ban by placing a sign by the side of each main road providing access to the Reservation, posting notice on the EPD's website, and by sending notice to all Tribal Departments.
- D. Unless otherwise specified by the Tribal Council, Open Burning for ceremonial purposes, campfires, or cooking may be commenced or continued during a Burn Ban provided such Open Burning is conducted in accordance with Title VII, Article III §3.02 (B).

## Article IV: Prohibitions

Any violation of the provisions listed in Title VII, Article IV, §4.01 – 4.06 shall result in the issuance of a Citation.

### 4.01 – General Prohibition on Open Burning

No Person or Nation Department shall cause or allow Open Burning on the Reservation unless the Open Burning activity is either exempt pursuant to Title VII, Article III §3.02 or the Person conducting the Open Burn has been issued a Burn Permit pursuant to Title II, Article IV.

### 4.02 – Prohibited Materials

A. Except as provided in this Section, no Person or Nation Department shall burn or allow the burning of the following materials within the Reservation:

i. Structures, except as authorized in writing by the Nation's Chairperson as directed by the Tribal Council, and attended by a staff member of the EPD, Manager of the Nation's Wildland Fire Program, or Officer of YAPD.

ii. Dead animals or parts of dead animals not used for food, unless pursuant to the lawful order of a public health official.

iii. Any material, other than natural vegetation, wood, or paper product, that normally emits dense smoke or noxious fumes when burned. Prohibited materials include, but are not limited to, the following:

1. Garbage.
2. Junked motor vehicles or any materials resulting from a salvage operation.
3. Tires or rubber materials or products.
4. Plastics, plastic products, or styro-foam.
5. Asphalt or composition roofing, or any other asphaltic material or product.
6. Tar, tarpaper, petroleum products, or paints.
7. Lumber or timbers treated with preservatives.
8. Construction debris or demolition Waste.

9. Pesticides, herbicides, fertilizers, or other chemicals.
10. Insulated wire.
11. Batteries.
12. Light bulbs.
13. Materials containing mercury (e.g., thermometers).
14. Asbestos or asbestos-containing materials.
15. Pathogenic Wastes.
16. Any Hazardous Wastes and Hazardous Materials.
17. Used fireworks and associated packaging.

#### 4.03 – Burning During Burn Bans

Except as provided in this Title, no Person or Nation Department shall commence or continue an Open Burning activity on the Reservation during a Burn Ban issued by the Tribal Council.

#### 4.04 – Attendance

No Burn Permit holder shall leave the permitted Open Burn unattended while burning.

#### 4.05 – Extinguishment

All Persons and Nation Departments conducting an Open Burn, regardless of whether the burn is permitted or exempt, must fully extinguish the Open Burn when the Open Burn is complete.

#### 4.06 – Defacement

No Person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted to assist in the enforcement of this Title.

## Title VIII – Natural Resources

### Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

**“Archery Hunt”** means the act of using a bow, typically made of a curved material whose ends are joined by a taut string, to shoot arrows for the purpose of Hunting.

**“Camping”** means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the purpose of overnight occupancy.

**“Dispersed Camping”** means Camping in any backcountry or urban location on the Reservation that is not specifically designated, developed, and managed as a Camping area.

**“Endangered Species”** means any species of fish, Wildlife, or plant which has been determined to be endangered under Section 4 of the Endangered Species Act as amended; listed species are found in 50 CFR §17.11-17.12.

**“Firearm”** means rifles, shotguns, handguns, weapons using smokeless or black powder, and pellet weapons, whether gas, pneumatic, battery or spring powered.

**“Fish”** means a wild fish, mollusk, crustacean, invertebrate, water-dwelling amphibian, or part, spawn, or ovum of any of those animals.

**“Fishing”** means an effort to capture, kill, injure, harass, or harvest a Fish whether or not the Fish is captured, killed, or wounded.

**“Hunting”** means using a weapon to attempt to capture, kill, injure, or harvest any Wildlife, whether or not such Wildlife is captured, killed, or wounded. Hunting does not include stalking, attracting, or lying in wait for any Wildlife by an unarmed Person solely for the purpose of watching Wildlife, taking photographs, or making audio or video recordings of Wildlife.

**“Invasive Species”** means animals and plants that are not native to Reservation and the Traditional Lands of the Yavapai and Apache Tribes and that pose a serious potential threat to native Wildlife or habitat. Potential threats include disease, competition for existing habitat, inter-breeding and potential genetic contamination. Invasive species include, but are not limited to, salt cedar, giant reed, Russian olive, and tree of heaven.

**“Spotlighting”** means the use of artificial light to locate Wildlife while Hunting.

**“Threatened Species”** means any species which is likely to become an Endangered Species within the foreseeable future throughout all or a significant portion of its range.

**“Verde River Riparian Conservation Corridor”** means the area designated by *Tribal Council Resolution Number 140-2023 (August 24, 2023), A Resolution Confirming and Amending the Yavapai Apache Nation’s Riparian Conservation Corridor and Management Plan for the Verde River as Originally Established Under Tribal Council Resolution No. 46-2006* and constituting the undeveloped lands under the Nation’s jurisdiction on both sides of the Verde River beginning at the center of the river and extending outward for three hundred (300) lateral feet on either side of the bankfull stage of the Verde River, as well as the undeveloped lands under the Nation’s jurisdiction on both sides of Wet Beaver Creek and Dry Beaver Creeks beginning at the centerline of both creeks and extending outward for seventy-five (75) lateral feet on either side, as well as any riparian areas associated with the Verde River mainstem, Wet Beaver Creek, and Dry Beaver Creek that the Nation owns in fee simple.

**“Wildlife”** means all mammals, birds, amphibians, and reptiles located on the Reservation, or migrating to the Reservation, that spend a majority of their life cycle on land, except that Wildlife shall not include any domestic animals on the Reservation.

## Article II: Directives

### 2.01 – Species Management

A. It is the policy of the Nation that the Nation is in the best position to protect Threatened and Endangered Species that occur on its own lands, and the Nation shall continue to exert its full authority to do so. The United States Fish and Wildlife Service and other federal agencies should consult with the Nation as early in advance as possible around federal actions related to Threatened and Endangered Species on or around the Reservation in order to minimize and avoid any adverse results on the Nation or the species that live on the Reservation.

B. In its management decisions, the EPD shall promote the protection and enhancement of culturally significant, Threatened Species, Endangered Species and protected species. This shall include, but is not limited to, recommending that the Tribal Council enact protections for culturally significant, Threatened Species, Endangered Species and protected species as it deems necessary to protect the Nation and its resources.

C. The EPD shall manage Invasive Species to support the preservation of native species and the overall protection of Threatened and Endangered Species

D. The EPD shall develop and implement integrated Invasive Species management actions and programs authorized by this section, including rapid response, early detection and monitoring, prevention, containment, control, and eradication.

#### 2.02 – Verde River Riparian Conservation Corridor Management

A. All activities that potentially affect the Verde River Riparian Conservation Corridor shall be controlled both within and outside of the Verde River Riparian Conservation Corridor as necessary to prevent adverse impacts.

B. Land-Disturbing Activities shall not be authorized in the Verde River Riparian Conservation Corridor except where it can be demonstrated through Environmental Review carried out pursuant to Title III that:

- i. The impact is both unavoidable and necessary.
- ii. Unavoidable and necessary impacts are minimized, and any remaining impacts are offset through the deliberate restoration, creation or enhancement (“restoration”) of riparian ecosystem of equivalent or greater resource value, including acreage and function.
- iii. The restored, created or enhanced riparian ecosystem will be as persistent as the original Verde River Riparian Conservation Corridor ecosystem it replaces.
- iv. The Applicant demonstrates sufficient scientific expertise, supervisory capability and financial resources to carry out the proposed restoration activity.

C. Best management practices shall be applied in the Verde River Riparian Conservation Corridor as follows:

- i. The use of herbicides and pesticides shall be prohibited in the removal of noxious plants in the Verde River Riparian Conservation Corridor except where no reasonable alternatives exist and the EPD, in consultation with other departments as needed, finds that such activity is in the public interest.

- ii. Mechanical removal of noxious plants shall be timed and carried out in a manner to minimize any disruption to Wildlife or habitat. There shall be no net-loss of riparian habitat for federally listed species.
- iii. Restoration of any part of the Verde River Riparian Conservation Corridor that has been disturbed or degraded shall use native plant materials with a diversity and type similar to that which originally occurred within the Verde River Riparian Conservation Corridor.
- iv. No permanent modification of any habitat essential to any federally listed species shall be permitted, unless authorized by Tribal Council resolution.
- v. Stabilization of exposed erosion prone surfaces along riparian areas, including but not limited to river and stream systems shall, wherever feasible utilize soil bioengineering techniques. (e.g. stabilization using vegetation and other natural mechanisms).
- vi. The use of commercial nursery stock in the restoration of disturbed or degrading shorelines shall emulate natural, native vegetation in size, structure and diversity.
- vii. The stocking of non-Native fish is prohibited.
- viii. Vehicles shall only be driven on existing roads within the Verde River Riparian Conservation Corridor, except that Nation Departments performing their official duties and Tribal Members who need vehicular access to visit culturally important locations or perform cultural activities may drive off-road within the Verde River Riparian Conservation Corridor.

#### 2.03 – Hunting

- A. The use or discharge of any Firearm while Hunting on the Reservation is prohibited.
- B. Non-Members are prohibited from Hunting on the Reservation.
- C. Tribal Members may Archery Hunt on the Reservation in accordance with the Nation’s Hunting Regulations and with a valid and current Hunting Permit issued pursuant to Title II.
- D. The Nation shall promulgate Hunting Regulations within 120 days of this Code being adopted into law. These Hunting Regulations shall specify requirements for Hunter education; locations where Hunting by Tribal

Members is allowed on the Reservation; Hunting seasons; limitations on number of Wildlife allowed to be killed; types of Wildlife permissible to Hunt; and other information necessary for the proper regulation of Hunting on the Reservation.

#### 2.04 – Fishing

It is the policy of the Nation that the Nation is in the best position regulate Fishing on its own lands. The Nation shall exert its full authority to do so in the event that it finds Fishing regulation is needed to protect the Nation’s natural resources.

#### 2.05 – Camping

A. Dispersed Camping by Non-Members is prohibited on the Yavapai-Apache Reservation.

B. Non-Members may only Camp on the Reservation in designated campgrounds or the Nation RV Park.

C. Title VIII, Article II, §2.05 (A) and (B) shall not apply to Camping in the yard of a Tribal Member’s residence with that Tribal Member’s consent.

### Article III: Prohibitions

Any violation of the provisions listed in Title VIII, Article III, §3.01 – 3.05 shall result in the issuance of a Citation.

#### 3.01 – Camping

Non-Members shall not Dispersed Camp on the Reservation.

#### 3.02 – Hunting and Fishing

A. No Persons shall use a Firearm to Hunt on the Reservation.

B. Non-Members shall not Hunt on the Reservation

C. No Tribal Member shall Hunt on the Reservation unless the Tribal Member holds a valid Hunting Permit and is Hunting in full compliance with the Nation’s Hunting Regulations.

D. No Person shall Spotlight or otherwise use any use of artificial light to Hunt Wildlife.



E. No Person shall Hunt or Fish while under the influence of intoxicating liquor or drugs.

F. No Person shall Hunt or Fish with the aid of dynamite, poison, electrical charge, explosive device, or poisonous or stupefying substance.

G. No Person shall use or place any lime, poison, fish berries, or any other substance deleterious to Fish or Wildlife within the Verde River or on the Reservation.

### 3.03 – Species Management

A. No Person shall disturb, destroy, transport, possess, process, purchase or sell any Endangered or Threatened Species on the Reservation.

B. No Person or Nation Department shall introduce or cause to be introduced Invasive plant or animal species into the Verde River or the Verde River Riparian Conservation Corridor.

### 3.04 – Vehicle Use in the Riparian Conservation Corridor

A. Driving any vehicle outside the bounds of an existing road within the Verde River Riparian Conservation Corridor is prohibited, except that Nation Departments performing their official duties and Tribal Members who need vehicular access to visit culturally important locations or perform cultural activities may drive off-road within the Verde River Riparian Conservation Corridor.

B. No Person shall drive any vehicle, including an off-road vehicle, across the Verde River on the Reservation.

C. The Agricultural Resource Department may drive heavy farm equipment across the Verde River.

D. The Agricultural Resource Department shall comply with the Nation's Verde River Crossing Vehicle Mitigation Plan when driving heavy farm equipment across Verde River.

E. The Nation shall promulgate a Verde River Crossing Vehicle Mitigation Plan within 120 days of this Code being adopted into law. This Verde River Crossing Vehicle Mitigation Plan shall specify requirements for heavy farm equipment inspections; requirements to prevent spillage; erosion mitigation; crossing locations; requirements for the installation of gates; and other information necessary for to mitigate the impact of Agricultural Resource Department heavy farm equipment crossing the Verde River.

### 3.05 – Defacement

No Person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted to assist in the enforcement of this Title.

## Title IX – Water Resources

### Article I: Declaration of Jurisdiction and Purpose

1.01 – To promote the health and welfare of the Yavapai-Apache Nation, to protect, conserve, manage, and sustainably develop the Nation's Water Resources, and to facilitate the United States' compliance with its trust responsibility to preserve and protect in perpetuity all Water Resources of the Yavapai-Apache Nation and the Reservation, the Yavapai-Apache Tribal Council, to the fullest extent as authorized under the Nation's Constitution, hereby asserts the Nation's prior, exclusive, and supreme rights in, ownership of, and jurisdiction over the Water Resources of the Yavapai-Apache Reservation and such other lands of the Nation as provided under Article I of the Nation's Constitution.

1.02 – The Yavapai-Apache Tribal Council enacts this Title IX to facilitate the Nation's exercise of authority over its Water Resources and to protect and preserve the Nation's rights in its Water Resources to the maximum extent permitted under the law of the Yavapai-Apache Nation, and under any applicable federal law. Nothing in this Title shall be construed to restrict or otherwise alter the rights of the Nation in its efforts to quantify and protect the Nation's federally reserved water rights and any other water rights and Water Resources held by the Nation under any other legal right.

1.03 – To the People of the Yavapai-Apache Nation, the Verde River (Hatayakehela to the Yavapai – big river, and Tu cho n'Lii to the Apache – big water flowing) and the Nation's Water Resources are important physical and spiritual anchors to their place in this world. When the Yavape' and DiIzhe'e Apache People of the Verde Valley were force marched to the concentration camp at San Carlos in the February winter-weather of 1875 they knew that someday they would return to the Verde Valley and the River that carved it. Today, the Nation's Water Resources, along with the animals and plants that depend on these waters, continue to be an essential aspect of Yavape' and DiIzhe'e Apache physical, cultural, and spiritual health and play a vital role in the preservation of the Yavape' and DiIzhe'e Apache traditional, cultural, and religious values.

1.04 – The provisions of this Title shall be liberally construed to effectuate the purpose of protecting the Nation's Water Resources and Water Resource Infrastructure. If any provision in this Title is found to be ambiguous, an interpretation consistent with the purpose of protecting the Nation's Water Resources and Water Resource Infrastructure shall be favored over any other interpretation.

## Article II: Definitions

In addition to the following defined terms, definitions not included in this Article II may be set forth as needed within the text of Title IX. As used in this Title IX, the following terms shall have the following meaning:

**“Discharge”** means the direct or indirect addition of any Pollutant to any of the Nation’s Water Resources.

**“Drought”** means a period of low precipitation sufficiently prolonged for the lack of water to cause hydrologic imbalance on the Reservation. Drought on the Reservation corresponds to the United States Drought Monitor classifying the Verde Valley as being in severe drought (D2), extreme drought (D3), or exceptional drought (D4).

**“Fixture”** means a receptacle, device, or appliance that is supplied with water or that receives liquid or liquid-borne Wastes and, directly or indirectly, connects into a drainage system (e.g., toilet, clothes washer, etc.).

**“Household Garden”** means land within the boundaries of a single-family or multifamily residence on the Reservation that residents are actively using for the cultivation of fruits, vegetables, plants, or herbs.

**“Impervious Cover”** means any hard-surfaced, man-made area that does not readily absorb or retain water, including, but not limited to, building roofs, parking and driveway areas, pavement, graveled areas, sidewalks, and paved recreation areas.

**“Irrigation Ditch”** means a canal, ditch, lateral, flume, pipeline, or other watercourse on the Reservation used to convey irrigation water. For the purposes of this Title, the definition of Irrigation Ditch shall include each **“Tribal Ditch,”** as defined in this Title, as well as all other canals, ditches, laterals, flumes, pipelines, and watercourses on the Reservation used to convey irrigation water and those that may be upgraded with pipe in the future.

**“Landscaped Areas”** means the part of a commercial or residential parcel that is dedicated to the planting of ornamental trees, shrubs, flower beds, or a combination thereof and which may include other decorative landscape features such as stones, but does not include the parcel’s building footprint, driveways, and non-irrigated parking areas.

**“Non-Point Source”** means any source of water pollution that does not meet the legal definition of “Point Source” in this Title.

**“Point Source”** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which Pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

**“Pollutant”** means solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, motor oil, and other industrial, municipal, and agricultural waste discharged into the Nation’s Water Resources. The Term Pollutant shall also include any substance determined by the Nation’s Tribal Court to constitute a Pollutant after considering evidence presented on the issue.

**“Pollution”** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, the Nation’s Water Resources due to the introduction of Pollutants that renders the Nation’s Water Resources harmful, detrimental, or injurious to humans, animal life, vegetation, property or public health, safety, or welfare, or that impairs the usefulness or the public enjoyment of the Nation’s Water Resources for any lawful or reasonable purpose.

**“Potable Water”** means water from a water system, whether operated by the Nation or an off-reservation municipal provider providing water to the Nation, which meets or exceeds the drinking water standards established for public water systems in the federal Safe Drinking Water Act, 42 U.S.C. §300f et seq.

**“Rainwater”** means water that has fallen as rain or snow.

**“Reclaimed Water”** means water that has been treated or processed to a level of water quality suitable for re-use by a centralized wastewater treatment plant or an on-site wastewater treatment facility.

**“Registered Professional Engineer”** shall mean a professional engineer with a valid registration in the State of Arizona.

**“Sanitary Sewer Overflow”** shall mean an overflow, spill, release, or diversion of wastewater from a sanitary sewer system, wastewater backups into buildings that are caused by blockages, or flow conditions in a sanitary sewer other than a building lateral.

**“Spring”** means a natural discharge point where groundwater flows to the land surface, whether perennially or intermittently.

**“Stormwater Management Plan”** means a document prepared by a Registered Professional Engineer that establishes a program of implementation needed to control surface runoff and drainage associated with rainstorm events and snow melt from causing adverse effects to the nearby environment.

**“Tamper”** or **“Tampering”** means the unauthorized cutting, tapping into, breaking, obstructing, damaging, defacing, changing, altering, diverting, contaminating, Polluting or otherwise interfering with the Nation’s Water Resources or Water Resource Infrastructure, with the intent to either harm the Nation’s Water Resources or Water Resource Infrastructure or Persons served by the water or infrastructure, or with the intent to gain some personal benefit by the Tampering. Tampering includes intentional Discharge of Pollutants into the Nation’s Water Resources. Tampering does not include inadvertent cutting, breaking, or damaging the Nation’s Water Resource Infrastructure. Tampering does not include inadvertent, accidental, or unintentional Discharge of any Pollutant into the Nation’s Water Resources.

**“Tribal Ditch”** means all Irrigation Ditches (notwithstanding the Nation’s right or lack of right to take water from said ditches), that convey irrigation water within and across the Nation’s reservation lands, including the OK Ditch, Verde Ditch, Eureka Ditch, and all associated ditch infrastructure.

**“Waste of Water”** means the indiscriminate, unnecessary, or excessive leaking, discharging, flowing, running, or other use of Potable Water, or such other water sources as the Tribal Council may designate by order from time to time. Waste of Water shall include, but not be limited to the following: leaving hoses running after the ground intended to be irrigated for landscaping purposes (watering, by hand or otherwise, of Landscaped Areas) has been saturated to the point that excess water flows over or through the ground to waste; using water in excess of that needed to wash, wet, or clean a dusty or dirty object, such as an automobile, such that the water flows to waste; leaving water running from a faucet in excess of the amount of water reasonably needed to complete domestic chores such as washing clothes or dishes; and failing to cure or fix known water leaks after a reasonable period of time.

**“Water Quality Control Plan”** means a document designating or establishing the following for the surface waters within a specified area: (1) uses to be protected; (2) water quality objectives; and (3) a program of implementation needed for achieving and maintaining water quality objectives.

**“Water Resources,” “Water Resources of the Yavapai-Apache Reservation,”** or **“Nation’s Water Resources”** shall mean any and all waters underlying, flowing through or otherwise found within the Reservation including, but not limited to, Reclaimed Water, water flowing through Irrigation Ditches, groundwater, Springs, the Verde River, and all other waters to which the Nation has or may have a legal right to now or in the future.

**“Water Resource Infrastructure”** or **“Nation’s Water Resource Infrastructure”** means all facilities and installations within the Nation’s lands that supply, convey, treat, monitor, and protect the Nation’s Water Resources and the Nation’s wastewater and sewer systems. Water Resource Infrastructure includes, but is not limited to, sewers (mains and laterals); manholes; water pipes (mains and laterals); flow measurement devices; gauging stations; recharge stations; water treatment facilities; and sewer and reclaimed water infrastructure.

**"WaterSense-listed Plumbing Fixture"** means a plumbing Fixture or plumbing Fixture fitting that has been: (a) tested by an accredited third-party certifying body or laboratory in accordance with the federal Environmental Protection Agency's WaterSense program or an analogous successor program; (b) certified by the body or laboratory as meeting the performance and efficiency requirements of the program; and (c) authorized by the federal Environmental Protection Agency's WaterSense program to use its label.

**“Water Shortage”** means a time on the Reservation where water resources are reduced for reasons other than Drought. Reasons for Water Shortage may include, but are not limited to, off-reservation groundwater pumping that depletes the surface and sub-flow of the Verde River. The Nation may declare a Water Shortage by analyzing Verde River streamflow levels measured at the USGS Stream Gauge on the Verde River, declining water levels in Nation wells, and soliciting input from relevant contracted experts or from federal, state, or local government agencies or officials with special expertise in water resources.

### [Article III: Water Conservation](#)

#### 3.01 – Use of Water on the Reservation

A. The Tribal Council shall have authority to issue orders at any time adjusting water use on the Reservation due to varying quantity conditions of the Nation’s water supply sources. Overall water use allocation decisions will be guided by the amount of precipitation received, the condition of aquifer systems, the flows of the Verde River, and expected long-term yield from all sources. Water development decisions will take into account the impact of the proposed development on the Nation’s water supply. At all times, the Tribal Council may direct the Nation to utilize alternative sources of water supply to mitigate water use and protect the Nation’s Water Resources for future generations. The Tribal Council is authorized to declare priority of use in times of Water Shortage, Drought, or at such other times as the Council determines in its discretion. The Tribal Council has authority to prohibit the Waste of Water taken from any of the Nation’s water supply sources.

B. At all times, Persons and Nation Departments on the Reservation shall prevent the Waste of Water and keep all water outlets closed when not in use. All water outlets, including those used in conjunction with hydrants, household Fixtures, and hoses, shall not be left running for any purpose other than the use for which they were intended. All outdoor hoses and other outdoor water delivery systems shall be equipped with Automatic Shut-off Nozzles to stop any Waste of Water prior to the user's need for running water.

C. In the event that a Person on the Reservation observes a Waste of Water, they are encouraged to notify the EPD or YAPD of the event.

### 3.02 – Notification and Repair of Water Leaks

A. Any Person or Nation Department using a plumbing system or water distribution facility owned or managed by the Nation who discovers that the excess use, loss or escape of water is occurring due to breaks, leaks, or other malfunction in that facility or system shall promptly notify the Nation's Utility Department, or such other Nation Department responsible for the facility or system, of the leak.

B. Within five (5) business days from being notified of the break, leak, or other malfunction under Title IX, Article III, § 3.02 (A), the Nation's Utility Department or such other of the Nation's Departments charged with jurisdiction over the facility or system shall repair the leak.

C. Any Person or Nation Department who discovers that the excess use, loss or escape of water is occurring due to breaks, leaks, or other malfunction in a plumbing system owned or managed by a Person other than the Nation shall promptly notify the Person responsible for that system of the leak.

D. Within five (5) business days from being notified of the break, leak, or other malfunction under Title IX, Article III, § 3.02 (C), the Owner or Operator of the leaking system shall repair the leak.

E. If a leak cannot be repaired within five (5) business days, the Person or Nation Department attempting to repair the leak shall inform the Tribal Council and the Attorney General's Office in writing of the following: the reason for the delay, the total amount of water being lost daily, and the expected time required to repair the leak.



### 3.03 – Water Conservation Measures for New Construction and the Replacement of Existing Fixtures

A. The provisions of Title IX, Article III, §3.03 shall apply to all new construction on the Reservation and to the replacement of Fixtures in all existing commercial and residential buildings.

B. Water meters manufactured consistent with standard industry practices as determined by the Nation shall be installed as part of all new commercial and residential construction on the Reservation.

C. Plumbing Fixtures and fittings in all new and remodeled construction shall not exceed the following flow rates and shall be a labeled WaterSense product, if available:

i. Commercial and residential toilets shall have a maximum effective flow volume of not more than 1.28 gallons of water per flush. Automatic, timed or self-flushing toilets without a sensor are prohibited.

ii. Urinals shall have a maximum effective flow volume of 0.5 gallons per flush. Automatic, timed or self-flushing urinals without a sensor are prohibited.

iii. Showerheads shall have a maximum flow rate of 2.0 gallons of water per minute at 80 psi.

iv. Lavatory faucets shall have a maximum flow rate of 1.5 gallons per minute at 60 psi.

v. Kitchen faucets shall have a maximum flow rate of 2.2 gallons per minute at 60 psi.

D. Dishwashers and clothes washers shall comply with US EPA ENERGY STAR program requirements.

### 3.04 – Landscaped Areas

A. The provisions of this section shall apply to all new residential and commercial development on the Reservation that include a Landscape Area exceeding 500 square feet and to existing commercial and residential buildings on the Reservation that are replacing or renovating Landscaped Areas that exceed 500 square feet.

B. All Landscaped Areas subject to Title IX, Article III, §3.04(A) shall utilize drought-tolerant or low water use plants in non-turf areas. When moderate to high water use plants are utilized, these plants shall be grouped together to facilitate efficient irrigation. Turf areas should be limited to twenty (20) percent

or less of the total landscaped areas, and xeriscape principles should be implemented where possible.

### 3.05 – Outdoor Watering

A. Automatic Shut-Off Nozzles are required for all hoses used for hand watering, car washing, and other outdoor domestic uses.

B. For all household residences and commercial properties on the Reservation, except as exempted below, time of day watering restrictions shall be in effect during the period June 1st through October 1st of each year, during which period outdoor watering shall only be permitted during the hours between 6:00 p.m. and 9:00 a.m. on Tuesday, Thursday, and Saturday.

C. Outdoor watering restrictions shall not apply to:

- i. Water systems utilizing low-volume drip irrigation watering.
- ii. Newly installed Landscape Areas for a period of ninety (90) days from the actual date of installation, and only where non-compliance with the outdoor water restrictions is necessary to establish new plant growth.
- iii. Supervised preparation, operation, maintenance, establishment, repair, or renovation of athletic fields of public parks or educational facilities, or other fields used for public events.
- iv. The use of collected Rainwater for outdoor domestic watering, although compliance with outdoor water restrictions is nonetheless encouraged to maximize efficient use of harvested Rainwater.
- v. The use of Reclaimed non-Potable water for outdoor domestic watering, although compliance with outdoor water restrictions is nonetheless encouraged to maximize efficient use of Reclaimed non-Potable water.

D. The Tribal Council may grant a written exception to Title IX, Article III, § 3.05 (C) in such cases where demonstrated hardship to the water user would result. A copy of all such exceptions shall be maintained on file, referenced by address, in the EPD.

### 3.06 – Exemptions

A. Where new development or replacement of Landscaped Areas includes the installation of a Household Garden, the provisions of Title IX, Article III, § 3.04 (B) shall not apply to the portion of the Landscaped Area that constitutes the Household Garden. Additionally, nothing in this provision shall be interpreted

to supersede the restrictions on Household Gardens found in the Nation's Land Use Code, Chapter 7, Garden Plots and Corrals.

B. Title IX, Article III, § 3.04 shall not apply to any commercial agricultural activity and/or enterprise on the Reservation, including but not limited to Agricultural Resources Department operations, community gardens, and plant nurseries.

C. Title IX, Article III, § 3.05 (B)-(C) shall not apply to any commercial agricultural activity and/or enterprise on the Reservation, including but not limited to the Nation's Agricultural Resources Department operations, the Nation's community gardens, and plant nurseries.

#### Article IV – Declaration of Drought or Water Shortage

##### 4.01 – Declaration of Drought or Water Shortage

A. The Tribal Council may declare a Drought or Water Shortage on the Reservation if, based on the localized conditions on the Reservation or in the larger Verde River watershed, it finds that declaring a Drought or Water Shortage and instituting water conservation measures is in the best interest of the Nation. To make its determination of Drought or Water Shortage, the Tribal Council may take into consideration any or all of the following: the United States Drought Monitor classification for the Verde Valley, off-reservation groundwater pumping, first-hand accounts from community members, consultation with experts, local declarations of drought by neighboring local, state, or federal jurisdictions, and an investigation by the EPD under Title IX, Article IV, § 4.01 (B). When declaring a Drought or Water Shortage, the Tribal Council shall also declare what water conservation measures, if any, are in effect on the Reservation for the duration of the Drought or Water Shortage.

B. At the request of the Tribal Council, the EPD shall investigate the United States Drought Monitor's current drought classification of the Verde Valley; aquifer conditions; off-reservation groundwater pumping; findings from relevant contracted experts, federal, state, or local agencies; and first-hand accounts from the Nation's community members, including drawing on the cultural and scientific knowledge of community members, to determine whether the Nation is experiencing a Drought or Water Shortage.

C. When the EPD conducts an investigation under Title IX, Article IV, § 4.01 (B), it shall submit a written report to the Tribal Council stating whether a Drought or Water Shortage is occurring and the reasoning for that finding. This report must include a recommendation of whether the Tribal Council should declare a Drought or Water Shortage and what water conservation measures are recommended for implementation.

#### 4.02 – Restrictions During Times of Drought or Water Shortage

A. Where the Tribal Council finds that a Drought or Water Shortage of any kind is occurring on the Reservation, it may declare that either Water Conservation Level I or II measures are in effect.

B. Where Water Conservation Level I is in effect, no Person or Nation Department shall:

- i. Wash vehicles on the Reservation. No restrictions apply to vehicles that must be washed for public health, safety, or welfare purposes.
- ii. Fill or refill pools, spas, or wading pools.
- iii. Use water from a fire hydrant except upon the written approval of the Public Works Director; and except for such uses associated with emergency response, firefighting activities, public health, safety, or welfare.

C. Where Water Conservation Level II is in effect, in addition to the restrictions sets forth in Title IX, Article III, § 4.02 (B), no Person or Nation Department shall:

- i. Use Potable Water for dust control on driveways, sidewalks, or streets or commercial operations, except as authorized in writing by the EPD for the purpose of complying with air quality standards. The use of non-Potable Reclaimed Water and non-Potable well water for this purpose is permitted.
- ii. Use Potable Water to wash down driveways, sidewalks, streets, patios, or paved surfaces. The use of non-potable Reclaimed Water and non-Potable well water for these purposes is permitted.
- iii. Irrigate residential and commercial landscapes more than two days per week, except for Household Gardens. From November 15 to April 15<sup>th</sup>, landscape irrigations shall not take place more than once per week, except for Household Gardens.

1. Title IX, Article III, § 4.02 (C) (iii) shall not apply to the Yavapai-Apache Nation Agricultural Resources Department operations, or any other Nation Department-run agricultural operations on the Reservation.

2. Title IX, Article III, § 4.02 (C) (iii) shall not apply to the use of non-Potable Reclaimed Water or harvested Rainwater, although

limiting outdoor watering to two days a week is nonetheless encouraged to maximize efficient use of harvested Rainwater and non-Potable Reclaimed Water.

D. When any level of Water Conservation Level is in effect on the Reservation, lodging establishments on the Reservation shall post water conservation notices in visible locations in guest bathrooms that encourage water conservation and give guests the option of no daily laundry service.

#### 4.03 – Notification of Drought or Water Shortage and Water Restriction Requirements

A. No later than 10 days before the first day that water conservation measures take effect on the Reservation, the EPD shall post notice of the Nation’s water conservation requirements on the Nation’s website and in publicly visible locations.

B. Notice issued under Title IX, Article IV, § 4.03 (A) shall include the following: (1) the Tribal Council’s finding and the reason for the declaration of Drought or Water Shortage; (2) what water conservation level is in effect; (3) what specific restrictions apply to water use on the Reservation for the duration of the declaration; (4) the effective date that the water conservation measures begin; and (5) information about any civil penalties for violations of the water conservation measures.

#### Article V: Protection of the Nation’s Water Resource Infrastructure and Ditches Located on the Yavapai-Apache Reservation.

##### 5.01 – Monitoring and Notice

A. The Utility Department, in coordination with other Nation Departments as needed, shall utilize whatever reasonable monitoring and enforcement it finds necessary to control the problems associated with the Tampering with Water Resource Infrastructure.

B. The EPD shall post notice of the Nation’s prohibitions on Tampering with Water Resource Infrastructure at locations where such Tampering may be likely and in highly visible locations on the Reservation. Such notice shall include information about the penalties for such Tampering. To determine the most appropriate places for signage, the EPD shall consult with the Utility Department, Agricultural Resource Department, and Public Works Department.

C. When a Sanitary Sewer Overflow occurs on the Reservation, the Utility Department shall provide written documentation of such events to the EPD. When a Sanitary Sewer Overflow occurs in the Tunlii wastewater system area,

a copy of the forms provided to Arizona Department of Environmental Quality shall be sufficient to meet this requirement.

#### 5.02 – Protection of Water Resource Infrastructure

A. No Person shall Tamper with, in any manner, the Nation’s Water Resource Infrastructure, in whole or in part.

B. No Person shall access or operate any part of the Nation’s Water Resource Infrastructure without the prior notification to and written approval from the Nation’s Utility Department.

C. No Person or Nation Department shall make a connection to the Nation’s Water Resource Infrastructure unless the written application therefor has been approved in writing by the Nation’s Utility Department.

D. No Person shall prevent any water meter or other device used in determining the charge for water utility services from accurately performing its measuring functions by Tampering with the meter or device or by any other means.

#### 5.03 – Protection of Irrigation Ditches

A. No Person or Nation Department shall:

i. Tamper with any Irrigation Ditch;

ii. Place any object into an Irrigation Ditch that causes an obstruction to the free flow of water;

iii. Deposit any Waste on or within any Irrigation Ditch; or

iv. Establish a diversion from an Irrigation Ditch, except that this provision does not apply to the Agricultural Resource Department and authorized Permittees under the Nation’s Land Use Code, Chapter 7, Garden Plots and Corrals.

B. Except for authorized personnel, no Person shall raise, lower, or otherwise disturb, any gate or other appurtenance on an Irrigation Ditch on the Reservation, except in case of emergency. In the event of such an emergency, the Agricultural Resource Department shall be notified immediately.

#### 5.04 – Operation and Maintenance of Irrigation Ditches

A. Except for the Eureka Ditch (in which the Nation has no right to take water) the Nation’s Agricultural Resource Department shall be responsible for operating and maintaining the Tribal Ditches on the Reservation.

B. The Agricultural Resource Department shall maintain the Tribal Ditches in good order and repair and shall maintain the embankments of Irrigation Ditches so that the waters of said Irrigation ditches will not flood or damage the nearby premises of others.

#### 5.05 – Eureka Ditch

A. Authorized personnel with responsibility for the Eureka Ditch on the Reservation shall be permitted to enter the Reservation to maintain and repair the Eureka Ditch, provided that such personnel provide advance notice to and coordinate the maintenance and repair work with the Agricultural Resource Department. Advance notice shall not be required in the case of an emergency, provided that the Agricultural Resource Department is promptly notified thereafter.

B. The Agricultural Resource Department shall be responsible for notifying Eureka Ditch personnel if repairs or maintenance of the Eureka Ditch are necessary to protect the Reservation from potential damage.

C. The Agricultural Resource Department shall be responsible for coordinating and providing oversight of maintenance or repair work conducted by Eureka Ditch personnel.

### Article VI: Protection of the Nation’s Water Resources

#### 6.01 – Prohibition Against Pollution

No Person or Nation Department shall cause Pollution of the Nation’s Water Resources.

#### 6.02 – Prohibition on Tampering by Discharge

No Person shall Tamper, with the Nation’s Water Resources by intentionally Discharging Pollutants into the Nation’s Water Resources.

#### 6.03 – Notification; Clean-up, and Abatement

A. Any Person or Nation Department whose Discharge of Pollutants into the Nation’s Water Resources causes Pollution shall immediately cease and desist from such Discharge and shall notify the Nation’s EPD about the Discharge as soon as possible and not more than twenty-four (24) hours from the time of the Discharge.

B. Upon providing the notice of Discharge required by Title IX, Article VI, §6.03(A), such Person or Nation Department shall disclose the type of Pollutant Discharged, the amount of Pollutant Discharged, and any other information required by the Nation.

#### 6.04 – Wellhead Protection Zones

A. The area within the 1-year travel time distance around each of the three public drinking water wells on the Middle Verde Reservation, as shown in Exhibit A is hereby declared the “Middle Verde Drinking Water Critical Impact Zone.”

B. The area within the 25-year travel time distance around each of the three public drinking water wells on the Middle Verde Reservation, as shown in Exhibit A, is hereby declared the “Middle Verde Drinking Water Buffer Zone.” It is noted that “The Middle Verde Drinking Water Buffer Zone” encompasses the smaller “Middle Verde Drinking Water Critical Impact Zone.”

#### 6.05 – Protective Measures Within Wellhead Protection Zones

A. Within the “Middle Verde Drinking Water Critical Impact Zone,” the following types of facilities and uses are prohibited, unless a variance to this provision is granted by Tribal Council resolution:

- i. Automobile body/repair shop;
- ii. Gas station;
- iii. Dry cleaner;
- iv. Metal plating, finishing, or fabricating facility;
- v. Electrical or electronic manufacturing facility;
- vi. Chemical processing or storage facility;
- vii. Machine shop;



viii. Underground Storage Tanks (except those with spill, overflow, and corrosion protection requirements in place);

ix. Mining, petroleum, or natural gas extraction facilities; and

x. Depositing or storing hazardous substances.

B. Unless granted an exception by Tribal Council resolution, any facility within the “Middle Verde Drinking Water Buffer Zone” whose operations involve or result in the collection, handling, manufacture, use, storage, transfer or disposal of any Pollutant or other Wastes with the potential to Pollute groundwater must have a secondary containment system which is easily inspected and whose purpose is to intercept any leak or release from the primary containment vessel or structure.

C. Underground Storage Tanks or buried pipes carrying Pollutants within the “Middle Verde Drinking Water Buffer Zone” must have double walls and inspectable sumps.

D. No Hazardous Waste shall be deposited or stored within the “Middle Verde Drinking Water Buffer Zone.”

E. At least annually, the EPD shall conduct a Hazardous Waste collection event for households located within the “Middle Verde Drinking Water Buffer Zone.”

F. Any Person or Nation Department who observes or causes a Discharge of any Pollutant, which threatens to Pollute groundwater within the “Middle Verde Drinking Water Buffer Zone” shall promptly report the spill or release to the EPD.

G. Any groundwater well declared by the Tribal Council to be abandoned within the “Middle Verde Drinking Water Buffer Zone” shall be properly capped, within a reasonable time, in accordance with standards no less stringent than the well abandonment standards and procedures applied by the Arizona Department of Water Resources, whose standards and procedures the Nation may consult as a guide.

H. The following measures shall be taken to protect the Middle Verde Wells from Pollution from the agricultural fields located within the “Middle Verde Drinking Water Buffer Zone:”

i. During the first year that this Title is in effect (the baseline year) and every five (5) years thereafter, at least one 0-8 inch soil sample per 40 acres in each active field within the “Middle Verde Drinking Water Buffer

Zone” shall be taken and tested for residual nutrients, nitrates, pesticides and other chemicals, and organic matter.

ii. Records shall be kept on each field that include soil sample data as required in Title IX, Article VII, § 6.05 (H)(i); nitrates in irrigation water; types and amounts of applied fertilizer; and types and amounts of pesticides used.

iii. Records created pursuant to Title IX, Article VII, § 6.05 (H) shall be kept by the Agricultural Resource Department for a period of at least five (5) years.

#### 6.06 – Protection of Springs

A. Springs on the Reservation are an important and valued part of the Nation’s Water Resources. Springs on the Reservation play a vital role in the preservation of the Yavape' and Dilzhe'e Apache traditional, cultural, and religious values.

B. In its management decisions, the Nation shall promote the protection and enhancement of flowing Springs on the Reservation. This includes exerting the Nation’s authority to protect Springs from Tampering, Pollution, and, subject to the Nation’s jurisdictional limits, the impacts of off-reservation groundwater pumping.

### Article VII: Stormwater Management

#### 7.01 – Stormwater Management Plan

A. Proposals to initiate any Land-Disturbing Activity on the Reservation with a total project footprint greater than one-half acre (21,780 square feet) shall not proceed until the Applicant has obtained either (1) EPD approval of a Stormwater Management Plan prepared by a Registered Professional Engineer to minimize the adverse impacts of stormwater and Non-Point source run-off or (2) a Stormwater Management Plan waiver from the EPD issued pursuant to Title IX, Article VII, § 7.01(C).

B. Upon approval, the Land-Disturbing Activity shall be conducted in accordance with the provisions of the approved Stormwater Management Plan.

C. A waiver for a Stormwater Management Plan may be granted if any of the following conditions are met:

i. The Land Disturbing Activity does not increase the amount of Impervious Cover on the Reservation by more than 2,500 square feet.

ii. A Registered Professional Engineer prepares a hydrologic analysis demonstrating that stormwater runoff occurring following the completion of the Land Disturbing Activity will be less than the stormwater runoff occurring prior to the initiation of the Land Disturbing Activity and that such runoff shall not cause adverse impacts to the Reservation.

#### 7.02 – Preliminary Review

A. Any Applicant proposing a Land-Disturbing Activity on the Reservation with a total footprint of more than one-half acre shall complete a “Stormwater Management Plan Initial Screening Form.”

B. If there is uncertainty regarding whether an activity requires completion of a “Stormwater Management Plan Initial Screening Form,” the Applicant may request clarification in writing from the EPD.

C. The EPD’s response to any inquiries submitted under Title IX, Article VII, §7.02 (B) shall be conveyed to the Applicant in writing within ten (10) business days of the EPD’s receipt of the inquiry.

D. Within fifteen (15) business days of receiving the completed “Stormwater Management Plan Initial Screening Form,” the EPD shall inform the Applicant, in writing, of one of the following:

i. The Applicant must prepare a Stormwater Management Plan.

ii. A waiver has been issued and no Stormwater Management Plan is required.

iii. The Applicant’s duty to prepare a Stormwater Management Plan may be satisfied by Applicant demonstrating compliance with other tribal or federal laws or regulations that are determined by the EPD to satisfy the Nation’s requirements for Stormwater Management Planning. If the Applicant is required to secure a National Pollutant Discharge Elimination System (NPDES) Permit, the Nation shall not require a Stormwater Management Plan to be prepared under tribal law.

E. In the event that Title IX, Article VII, § 7.02 (D)(iii) governs and the Applicant is required by federal law to secure a NPDES Permit, the Applicant shall submit copies of all documents related this Permit to the EPD and the Attorney General’s Office for review.

### 7.03 – Stormwater Management Plan Requirements

A. The Stormwater Management Plan shall be prepared by a Registered Professional Engineer and shall only be accepted by the EPD if stamped and signed by said Registered Professional Engineer.

B. The Stormwater Management Plan shall include supporting computations, drawings; best management practices for erosion and sediment control; sufficient narrative information to describe the manner, location and type of measures utilized to manage runoff from the footprint of the entire Land-Disturbing Activity; and whatever ongoing operation and maintenance activities are needed to ensure the control of runoff from the footprint of the entire Land-Disturbing Activity.

C. The Stormwater Management Plan shall include provisions to encourage the recharge of stormwater on the Reservation. This may include, but is not limited to, designs for a centralized area within the footprint of the Land Disturbing Activity that is engineered to ensure the recharge of stormwater.

D. In approving the Stormwater Management Plan, the Nation may impose such conditions as deemed necessary to ensure compliance with the provisions of this Code; the preservation of the public health and safety of the Nation, its members, and the Reservation; and conformance with the laws of the Nation and any applicable federal laws.

E. The EPD's approval of a Stormwater Management Plan is conditioned on the Applicant's compliance with the plan itself and with the Nation's laws and regulations, as well as applicable federal water quality laws, regulations, and rules.

### 7.04 – Stormwater Management Plan and Environmental Review

A. Where a new Land-Disturbing Activity is subject to Environmental Review under Title III, Article IV of this Code, the Applicant shall submit the Stormwater Management Plan as part of the Environmental Review, and the review of the Stormwater Management Plan shall be conducted in accordance with the timeline set forth under Title III, Article IV of this Code.

B. Where a new Land-Disturbing Activity is not subject to Environmental Review under Title III, Article IV of this Code, the Applicant shall submit the Stormwater Management Plan directly to the EPD.

C. Where Title IX, Article VII, § 7.04 (B) governs, within ten (10) business days of receiving the Stormwater Management Plan, the EPD shall inform the Applicant whether additional information is needed to conduct the review.

D. If additional information is requested under Title IX, Article VII, § 7.04 (C), the Applicant shall have ten (10) business days to provide the additional information to the EPD.

E. Where Title IX, Article VII, §7.04 (C)-(D) governs, within thirty (30) business days of receiving the final Stormwater Management Plan and any supplemental information, the EPD, after consulting with the Attorney General's Office, shall inform the Applicant, in writing, whether the Stormwater Management Plan is approved or denied, setting forth the reasons for any such denial.

F. In the event a Stormwater Management Plan is denied, the Applicant may submit a revised Stormwater Management Plan that addresses the reasons for denial. The revised Stormwater Management Plan will be reviewed in accordance with the review process set forth in Title IX, Article VII, §7.04.

G. The Applicant shall be responsible for any applicable review fees, which shall always include a base fee and in addition, depending on the complexity of the Management Plan, may include fees for in-house legal review, third-party review, and any additional inspection fees:

i. Base fee - \$100.

ii. In-house legal plan review fee: Number of hours x current attorney hourly rate.

iii. Third-party Registered Professional Engineer review fees at actual cost billed to Nation, including Nation's administrative costs.

iv. Additional inspection as warranted to ensure Plan compliance: Number of hours, including Nation staff and outside experts, x current hourly rate.

The total fee for Stormwater Management Plan approval shall be the sum of the above elements. Where a Nation Department or Nation Subordinate Economic Organization is the Applicant, such fees shall be included in any project budget presented to Tribal Council. Plan review fees shall be accrued until the Stormwater Management Plan is approved. The Applicant shall pay accrued review fees regardless of whether an approval is given.

#### 7.05 – Plan Amendments

Applications for amendment of a Stormwater Management Plan may be made at any time under the same process set forth in Title IX, Article VII, § 7.04. Until such time as said amendment is approved by the EPD, in consultation

with the Attorney General's Office, the Land-Disturbing Activity shall not proceed except in accordance with the Stormwater Management Plan as originally approved.

## Article IIX: Data Sharing and Water Resource Monitoring

### 8.01 – Water Resources Monitoring Program

A. Subject to available funding, the EPD shall establish a program to monitor water quality and quantity on the Reservation. This monitoring program shall enable the Nation to analyze and understand the range of activities that may result in adverse impacts to the water quality and quantity of the Nation's Water Resources. The EPD shall manage its water monitoring program with the goal of providing the Nation with the information needed to ensure that the quality and quantity of the Nation's Water Resources are protected and preserved, and that off-Reservation uses of water do not adversely affect the Nation's Water Resources.

B. The EPD may engage in the following activities related to its monitoring program.

- i. Compile and review historical data on the water quality and quantity within and around the Reservation; develop a format for a water quality inventory; and enter data of acceptable quality into that inventory.
- ii. Determine gaps in existing data and continue to administer a water quality monitoring program, including making recommendations to the Tribal Council about whether to apply for special designations or programs available to Tribes under the federal Clean Water Act.
- iii. Oversee field collection and laboratory analysis of samples and reporting of water quality data.
- iv. Compile a Standard Operating Procedures manual for water quality monitoring procedures and a Quality Assurance Project Plan that outlines the Quality Assurance/Quality Control requirements for collecting and analyzing water quality data.
- v. Obtain and operate appropriate devices or systems necessary to monitor, compile, and analyze the quality of the Nation's Water Resources and determine whether that quality is consistent with the Nation's policies and supports the Nation's water needs.
- vi. Develop and update a Water Quality Control Plan for the Nation's Water Resources.

vii. Update the Nation's source water protection plan for the Nation's groundwater wells.

viii. Conduct such water quantity monitoring activities as needed to provide data regarding changes in the quantity of the Nation's Water Resources.

C. The EPD's monitoring shall include, but shall not be limited to, monitoring the impact of Pollution from on and off-reservation Point sources and Non-Point Sources on the Nation's Water Resources. Monitoring and analysis activities shall be performed in accordance with EPA's Quality Assurance/Quality Control guidance.

#### 8.02 – Data Sharing

A. To facilitate the sharing of information across the Nation's Departments and promote the most effective management of the Nation's Water Resources, data sharing between the Nation's Departments with responsibility for management of the Nation's Water Resources is highly encouraged.

B. Annually, the Utility Department shall provide copies of Consumer Confidence Reports to the EPD.

C. The EPD shall provide copies of all surface and groundwater water data collected by the EPD and its contractors to the Utility Department.

D. Where inter-departmental requests for information related to water resources are made, the Nation Department subject to the request shall make a good-faith effort to respond to the request in a timely manner. Where the information is available, the Nation Department subject to the request shall provide the requested information no later than fourteen (14) business days from the date of the request.

E. Except for required disclosures to the Federal Environmental Protection Agency under its regulations and grant requirements, no information or data about the Nation's Water Resources shall be provided to any outside requestor without Tribal Council consent provided by resolution.

#### Article IX: Prohibitions

##### 9.01 – General

A. Any violation of the provisions listed in Title IX, Article V, §5.02- §5.03; Title IX, Article VI, §6.01 – §6.05; Title IX, Article V, §7.01, §7.05 and §7.06; and

those listed in Title IX, Article VIII, §9.02- §9.06 below, shall result in the issuance of a Warning or Citation as set forth in Title X of this Code.

B. In the case of a violation of Title IX, Article V §5.02 (A) or (D), Title IX, Article V §5.03 (A)(i), or Title IX, Article VI §6.02 that involves Tampering, the violator may also be liable for prosecution under the Nation's Criminal Code.

#### 9.02 – Waste of Water

A. Waste of Water, as defined in this Title, shall be unlawful on the Reservation at all times.

B. All Persons and Nation Departments on the Reservation shall comply with water conservation measures instituted by the Tribal Council.

C. All Persons and Nation Departments shall comply with the notification and repair of water leaks requirements set forth in Title IX, Article III, §3.02.

#### 9.03 – Water Efficient Fixtures

A. No new construction shall be completed except with the installation of Fixtures that comport with the requirements of Title IX, Article III, §3.03.

B. No Fixtures shall be replaced or upgraded except in compliance with the requirements of Title IX, Article III, §3.03.

#### 9.04 – Watering Restrictions

A. From the dates of June 1<sup>st</sup> – October 1<sup>st</sup>, unless exempted by Title IX, Article III, §3.05 (C) or (D) or Title IX, Article III, §3.06, no Person or Nation Department shall water outdoors, including watering of Household Gardens, except between the hours of 6 PM and 8 AM as set forth in Title IX, Article III, §3.05.

B. No Person or Nation Department shall use a hose for hand watering, car washing or other outdoor domestic uses unless that hose is equipped with an Automatic Shut-Off Nozzle.

#### 9.05 – Landscaping

Unless exempted by Title IX, Article III, §3.06, new Landscaped Areas on the Reservation shall comply with the requirements of Title IX, Article III, §3.04.



#### 9.06 – Groundwater Wells

No new groundwater wells shall be drilled on the Yavapai-Apache Reservation without the authorization by the Tribal Council as set forth in a Council Resolution approving the siting, drilling specifications, logging, well capacity, and operation of the new well on the Reservation. The Tribal Council shall not consider a request for a new well unless the developer of the proposed new well has fully complied with the Environmental Review process required by Title III of this Environmental Code.

## Title X – Environmental Code Enforcement

### Article I: Civil Enforcement

#### 1.01 – Enforcement Policy

It is the policy of the Nation to encourage informal, practical, results-oriented resolution of alleged violations, to encourage actions needed to prevent damage to the Nation's environmental and natural resources, and to encourage actions needed to prevent harm to the health, safety, and welfare of the Nation's citizens. It is the policy of the Nation, consistent with the principles of due process, to provide effective procedures for enforcement of the Nation's Environmental Code.

#### 1.02 – Exhaustion

All applicable administrative remedies established under this Environmental Code must be exhausted before judicial relief is sought in the Tribal Court.

### Article II: Resolution of Violations by Nation Departments

#### 2.01 – Informal Resolution

A. In any case in which any Nation Department is alleged to have violated the terms and conditions of a Permit or to have conducted activities without a Permit or to otherwise be in violation of the Environmental Code (collectively "violation"), the Attorney General shall attempt to resolve the matter informally through communication with the head of the relevant Department.

B. In the event that attempts at informal resolution pursuant to Title X, Article II, §2.01 (A) do not resolve the violation, the Attorney General shall bring this matter to the attention of the Tribal Chairperson, who may take action to ensure compliance by the Department with this Code. The Chairperson may also bring the matter to the Tribal Council should the Chairperson determine that Council review is desirable.

#### 2.02 – Hearing to Develop Recommended Corrective Action

If the violation cannot be resolved informally, the Attorney General shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending to the Tribal Council a course of corrective action if necessary. The Tribal Council's determination of the matter shall be final and no appeal to the Tribal Court shall be allowed.

## Article III: Enforcement of Violations

### 3.01 – Warning

A. If any Person has violated or is in violation of any provision of the Environmental Code, or any requirement of a Permit or contract issued pursuant to the Environmental Code, the EPD or YAPD has the discretion to issue a Warning to said Person, business, or entity.

B. If the EPD issues a Warning, it shall provide YAPD with a copy of the Warning within three (3) days. If YAPD issues a Warning, it shall provide the EPD a copy of the Warning within three (3) days.

C. A Warning issued under this Title shall state with reasonable specificity the nature of the violation; the requirement, provision, or section of this Code alleged to have been violated; a reasonable time for compliance or cure, if applicable; and what future fees will apply if the violation continues beyond the time set for compliance.

D. The maximum number of Warnings that may be issued for an ongoing or repeated violation is two (2); after the issuance of two (2) Warnings for an ongoing or repeated violation, a Citation must be issued.

### 3.02 – Citation

A. If any Person has violated or is in violation of any provision of the Environmental Code, or any requirement of a Permit or contract issued under the Environmental Code, any officer within the YAPD may issue a Citation.

B. The Citation shall be transmitted to the alleged violator either by certified mail, return receipt requested, by personal service, or by any means authorized by the Yavapai-Apache Nation Rules of Civil Procedure Rule 5, Section 3.

C. A Citation for Public Nuisance caused by an abandoned or inoperable vehicle that is not blocking access to or preventing use of public facilities shall be placed upon said vehicle, clearly stating that the vehicle will be removed thirty (30) days following the date of issuance of the Citation. A copy of the Citation shall be mailed via certified mail, return receipt requested, to the last registered and/or legal owner of record of the vehicle, or part(s) thereof. If identification of the last registered and/or legal owner cannot be determined, the Citation will be sent to the Yavapai-Apache Nation Tribal Court to be held on file for a period of not less than one year. If the owner has not challenged the Citation or abated the Public Nuisance within thirty (30) days following the placement of the Citation on the vehicle, the abatement process set forth in Title IV, Article V, §5.03 (A)-(B) shall commence.

D. The Nation may immediately abate Public Nuisance caused by vehicles that block access to or prevent public use of public facilities such as roads, streets, alleys, highways, or public parking areas by towing away or impounding such vehicles. Following such impoundment or towing, a Citation shall be mailed via certified mail, return receipt requested, to the last registered and/or legal owner of record of the vehicle, or part(s) thereof. If identification of the last registered and/or legal owner cannot be determined, the Citation will be sent to the Yavapai-Apache Nation Tribal Court to be held on file for a period of not less than one year. If the owner has not challenged the Citation within thirty (30) days following the impoundment or towing, the abatement process set forth in Title IV, Article V, §5.03 (B) shall commence.

E. A Citation issued under this Title shall state with reasonable specificity the nature of the violation; the requirement, provision, or section of this Code alleged to have been violated; a reasonable time for compliance or cure, if applicable; any monetary penalty, if applicable; shall state that the alleged violator is entitled to appeal the Citation to the Nation's Tribal Court within thirty (30) days after the date of issuance of the Citation; and, if applicable, shall state the option for the violator to resolve the Citation by remitting payment of the monetary penalty to the Tribal Court within ten (10) days.

F. Within three (3) days of issuance of the Citation, the YAPD Officer shall provide a copy of the Citation to the Office of Attorney General and the Tribal Court.

### 3.03 – Opportunity to Cure

A. If the violation is curable, the Citation shall include notice to the violator of the opportunity to cure.

B. Within five (5) business days of receiving the Citation, the violator must submit a written plan to cure the violation to the EPD ("Cure Plan").

C. The EPD shall have ten (10) business days from receiving the Cure Plan to approve, reject, or set conditions upon its approval of the plan, and shall provide a reasonable timeframe in which a cure must be completed to avoid a financial penalty, injunction, exclusion, or other civil remedy.

D. The EPD shall notify the Office of Attorney General within three (3) days of any decision it makes under Title X, Article III §3.03 (C).

E. If the violator acts to cure the violation, the violator shall notify the EPD in writing of the completed cure prior to the expiration of the cure period.

F. Within five (5) business days of receiving notice of a completed cure, the EPD shall conduct a site inspection and provide written notice to the violator and to the Office of Attorney General of whether the cure is acceptable to bring the violator into compliance with the Environmental Code or whether the Citation remains in effect.

#### 3.04 – Additional Opportunities to Cure

A. If the first attempted cure is not sufficient to bring the violator into compliance with the Environmental Code, but was made in good faith by the violator, the EPD may provide written notice of an additional opportunity for the violator to cure the offense before the Citation becomes final and enforceable.

B. Within five (5) business days of receiving written notice of an additional opportunity to cure, the violator must submit a written plan to cure the violation to the EPD.

C. The EPD shall have ten (10) business days to approve, reject, or set conditions upon its approval of the plan.

D. The EPD shall notify the Office of Attorney General within three (3) days of any decision it makes under Title X, Article III §3.03 (A) and (C).

E. The EPD may provide as many additional opportunities to cure as it deems appropriate for up to 365 days from the first Citation.

F. With each subsequent attempt to cure, the violator and EPD must follow the notice protocols of Title X, Article III §3.04 (B)-(D).

### Article IV: Penalty Assessment

#### 4.01 – Penalty Assessment Program

A violation of this Code is a civil offense. Any Person found by the Tribal Court to be in violation of this Code shall be subject to civil liability for payment of the fines set out in this Section, which shall be assessed for each violation, in addition to any contractual fees and any court costs arising under this Code, which may be ordered by the Court at its discretion.

A. Failure to conduct the Environmental Review required under Title II, Environmental Review, shall result in a fine of not less than one hundred dollars (\$100) and up to one thousand dollars (\$1,000).

B. A violation of Title IV, Article IV, §4.01- 4.02, Public Nuisance Prohibitions, shall be punishable by a fine of not less than one hundred dollars (\$100) and up to one thousand dollars (\$1,000).

C. A violation of Title V, Article III, §3.03, Illegal Dumping, shall be punishable by a fine of not less than five hundred dollars (\$500) and up to one thousand dollars (\$1,000).

D. A violation of Title V, Article III, §3.01, §3.02 and §§3.04 – 3.14, Waste Management Prohibitions, shall be punishable by a fine of not less than one hundred dollars (\$100) and up to five hundred dollars (\$500).

E. A violation of Title VI, Article VII, §§7.01 – 7.04, Pesticides and Toxic Chemicals Prohibitions, shall be punishable by a fine of not less than one hundred dollars (\$100) and up to five hundred dollars (\$500).

F. A violation of Title VII, Article IV, §§4.01 – 4.06, Air Quality Prohibitions, shall be punishable by a fine of not less than one hundred dollars (\$100) and up to one thousand dollars (\$1000).

G. A violation of Title VIII, Article III, §§3.01 – 3.05, Natural Resource Prohibitions, shall be punishable by a fine of not less than one hundred dollars (\$100) and up to five hundred dollars (\$500).

H. A violation of any condition contained within a Permit issued under Title II, Permits, is punishable by a fine of not less than one hundred dollars (\$100) and up to one thousand dollars (\$1000).

I. A violation of Title X, Article VII, §7.01 – Emergency Orders shall result in a fine of not less than five hundred dollars (\$500) and up to two thousand dollars (\$2,000).

J. Violations of Title IX:

i. A violation of Title IX, Article V, §5.02 (A) or (D), Protection of Water Resource Infrastructure; Title IX, Article V §5.03 (A) or (B), Protection of Irrigation Ditches; and Title IX, Article VI §6.02, Prohibition on Tampering by Discharge shall be punishable as follows: by a fine of not less than five hundred dollars (\$500) and up to two thousand dollars (\$2,000).

ii. All violations of Title IX, Article V, § 5.02 (B) and (C); Title IX, Article VI, §§ 6.03 – 6.05; Title IX, Article VII, § 7. 01, §7.05, and §7.06; and Title IX, Article IX, §§9.02 - 9.06 shall be punishable by a fine of not less than one hundred dollars (\$100) and up to five hundred dollars (\$500).

iii. In addition to any fines issued pursuant to Title X, Article IV, § 4.04 (J)(ii), fines for violations of Title IX, Article V, §5.02 (B)-(D); Title IX, Article V, §5.03 (A)(ii)-(iv) and (B); and Title IX, Article VI, §6.01 that involve Pollution of the Nation's Water Resources may include costs associated with or necessary to clean-up, abate, or remove said Pollution from the Nation's Water Resources and restore the Nation's Water Resources to its original condition.

iv. Fines for violation of Title IX, Article V §5.02 (A) or (D), Title IX, Article V §5.03 (A)(i), or Title IX, Article VI §6.02 that include Tampering shall include costs associated with or necessary to clean-up, abate, repair, treat, or remove the impacts of the violation and restore the Nation's Water Resources, Water Resource Infrastructure, or Nation's Ditches to their original, operable, and safe condition.

v. In the case of a violation of Title IX, Article V §5.02 (A) or (D), Title IX, Article V §5.03 (A)(i), or Title IX, Article VI §6.02 that involves Tampering, the violator may also be liable for prosecution under the Nation's Criminal Code.

K. Any unpaid fees, fines, penalties, or other unpaid funds owed to the Nation under this Code shall be considered a debt owed to the Nation and shall be collectible in Tribal Court.

L. Vehicles, equipment, and other property used to commit acts which violate any provision of this Title shall be subject to confiscation and impoundment, and at the Tribal Court's discretion, may be forfeited upon request by the Nation through the Attorney General. In that event, the reasonable value of said property may be used to offset fines or penalties which may be assessed by the Tribal Court. If the forfeited property's value exceeds the amount of fines and penalties, the difference shall be remitted back to the violator.

M. In addition to ordering the payment of all fees, fines, penalties, and court costs arising under the Environmental Code, the Tribal Court shall have discretion to impose any additional financial or other penalties, including, but not limited to, clean-up costs associated with violations; any restitution owing to any Person whose property was damaged due to the violation; and community service. In determining the amount of a fine, the Tribal Court shall have the discretion to take into account the violator's culpability and intent; the seriousness of the violation; the violator's full compliance history and good faith efforts to comply; and the duration of the violation as established by any credible evidence. The award of restitution under this Title of the Environmental Code shall not foreclose the right of any Person to bring a separate civil action seeking damages, however any amount of restitution awarded under the Environmental Code shall be offset against any damages awarded in the separate civil case.

#### 4.02 – Repeat Violators

Violations by the same Person that occur within twelve (12) months of a prior, similar offense shall result in the minimum fine for that offense being doubled, in addition to any costs and fees incurred by the Nation.

#### 4.03 – Ongoing and Continuing Violations

Where the Tribal Court determines that a violation threatens substantial harm to the Nation and the violation has been or is continuing for multiple days, the Tribal Court shall have discretion to consider each day of the continuing violation a separate violation and may apply the penalties set forth in Title X, Article IV §4.01 (A)-(J) for each day that the violation occurs.

#### 4.04 – Resolution of Citation for Minor Violations Through Voluntary Payment

A. For minor and non-repetitive offenses of certain violations of Environmental Code as set out below, YAPD Officers may issue a Citation that allows the violator the option to voluntarily accept a penalty assessment without resort to the Tribal Court.

B. The option to accept a penalty assessment shall only be eligible for the violations of the Environmental Code provisions listed in Article X, § 4.04 (C).

C. The penalty assessment schedule for minor, non-repetitive violations shall be as follows:

- i. Failure to conduct the Environmental Review required under Title II, Environmental Review shall result in a fine of one hundred dollars (\$100).
- ii. A violation of Title IV, Article IV, §§4.01- 4.02, Public Nuisance Prohibitions, shall be punishable by a fine of one hundred dollars (\$100).
- iii. A violation of Title V, Article III, §3.01, §3.02 and §§3.04 – 3.14, Waste Management Prohibitions, shall be punishable by a fine of one hundred dollars (\$100).
- iv. A violation of Title VI, Article VII, §§7.01 – 7.04, Pesticides and Toxic Chemicals Prohibitions, shall be punishable by a fine of one hundred dollars (\$100).
- v. A violation of Title VII, Article IV, §§4.01 – 4.06, Air Quality Prohibitions, shall be punishable by a fine of one hundred dollars (\$100).



vi. A violation of Title VIII, Article III, §§3.01 – 3.05, Natural Resource Prohibitions, shall be punishable by a fine of one hundred dollars (\$100)

vii. A violation of any condition contained within a Permit issued under Title II, Permits, is punishable by a fine of one hundred dollars (\$100).

viii. Except for the violations listed in Title X, Article IV, §4.01(J)(i), which shall not be eligible for voluntary payment, violations listed in Title IX, Article IX, Water Resource Prohibitions, shall be punishable by a fine of one hundred dollars (\$100).

D. Payment of the prescribed penalty assessment shall be considered a complete satisfaction of the violation. No appeal shall be allowed following payment of the penalty assessment.

#### 4.05 – Payment Method

Payment of any voluntary penalty assessment must be made by mail to the Tribal Court or in person at the Tribal Court within ten (10) days from the date of issuance of the Citation. Payments of penalty assessments are timely if postmarked within the time limits set from the date of the issuance of the Citation. The Tribal Court shall issue a receipt when a penalty assessment is paid in currency, but checks tendered by the violator as payment are sufficient receipt. At no time shall a YAPD Officer accept payment of a penalty assessment.

#### 4.06 – Communication with the Attorney General’s Office

Within three (3) days of receiving a penalty assessment payment, the Tribal Court Clerk shall inform the Office of the Attorney General that the Citation has been finally resolved and no further action from the Attorney General is needed.

#### 4.07 – Disposition of Funds

All penalty assessments and Tribal Court fines, less any Tribal Court costs, received by the Nation or the Tribal Court from violations of the Environmental Code shall be deposited in the Nation’s General Fund.

#### 4.08 – Failure to Pay

If a penalty assessment is not paid within ten (10) days from date of the issuance of a Citation, the Office of the Attorney General shall begin the process of filing a summons and complaint in Tribal Court to enforce the

Citation on behalf of the Nation in accordance with Environmental Code Title X, Article V.

#### Article V: Tribal Court Jurisdiction

The Tribal Court shall have exclusive jurisdiction to hear and decide all enforcement actions arising under this Environmental Code; provided, however, that nothing in this Title shall be construed to preclude actions brought in Federal Court under any applicable federal laws. Nothing in this Environmental Code shall be construed by any court to constitute a waiver of the Sovereign Immunity of the Yavapai-Apache Nation or its elected officials, officers, employees, and agents acting within the scope of their duties.

##### 5.01 – Applicability of Yavapai-Apache Nation Rules of Civil Procedure

The Yavapai-Apache Nation Rules of Civil Procedure, as amended by the Court and or the Tribal Council from time to time, and as modified by Title X, Article V, §§ 5.02-5.04, shall govern all civil actions under this Title.

##### 5.02 – Scope of Civil Actions Under the Environmental Code

Only the following civil actions arising under the Environmental Code may be heard by the Tribal Court:

#### A. Appeal of the following final Nation decisions:

- i. The denial of a Permit, the revocation or cancellation of a Permit, or a significant revision to an existing Permit.
- ii. The issuance of a Citation and associated civil penalty.
- iii. The issuance of an Emergency Order.
- iv. An action confiscating, impounding, or forfeiting property involved in an alleged violation of the Environmental Code.

B. Actions brought by the Attorney General arising out of violations of the Environmental Code that seek a preliminary injunction, a permanent injunction, civil judicial forfeiture, the enforcement of a Citation, the payment of administrative civil penalties, exclusion of non-members, or any other relief provided by law.

- i. In the event that a Non-Member commits repeated violations of the Environmental Code that exhibit indifference to human life and safety or commits a grossly negligent violation of the Environmental Code, such

act shall constitute cause for exclusion under the Nation's Exclusion Ordinance. The Attorney General, at the request of Tribal Council in accordance with the procedures provided in the Nation's Exclusion Ordinance, may petition the Tribal Court for the Non-Member to be excluded from the Reservation.

#### 5.03 –Appeal of Final Nation Decisions

A. An action to appeal a final Nation decision, listed in Title X, Article V, § 5.02 (A), to the Tribal Court may be commenced only by the following:

- i. A Permit holder whose Permit is denied or otherwise impacted by a decision listed in Title X, Article V, § 5.02(A)(i).
- ii. A recipient of a Citation and/or associated civil penalty.
- iii. The recipient of an Emergency Order or a Person who was adversely and materially affected by the issuance of an Emergency Order.
- iv. A property owner whose property is confiscated, impounded, or forfeited by the Nation due to an alleged violation of the Environmental Code.

B. An action to appeal a final Nation decision shall be commenced by the affected party by filing a complaint for review of said decision in Tribal Court within thirty (30) days from the date when a copy of the decision sought be reviewed is served upon the affected party. If an action is not filed in Tribal Court within thirty (30) days from the date when a copy of the final Nation decision sought be reviewed is served upon the affected party, the Nation's decision and any associated civil penalties shall be final and non-appealable.

#### 5.04 – Appeals

Any party to a civil action arising under this Environmental Code who is dissatisfied with the judgement or verdict of the Tribal Court may appeal therefrom to the Yavapai-Apache Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Tribal Court and shall be reviewable by the Tribal Court of Appeals only when arbitrary and capricious.

## Article VI: Civil Warrants

### 6.01 – Procedure for Actions by the Nation Seeking Issuance of Civil Warrants

A. Where the YAPD or EPD seeks a civil search warrant as part of an investigation under Title I, Article II, §2.06 (C), the Attorney General shall submit to the Tribal Court a signed affidavit on behalf of the relevant Department providing a statement of issues and detailing the need for a civil search warrant.

B. The Tribal Court shall issue an order for a civil warrant if it finds that the facts and circumstances detailed in the affidavit establish sufficient evidence that a reasonable Person would believe that the alleged violator is committing or has committed a violation of the Environmental Code.

C. The civil search warrant shall specify the location and items to be searched.

## Article VII: Emergency Orders

### 7.01 – Emergency Orders

A. The EPD or the Attorney General may petition the Tribal Council for such Emergency Orders as are deemed necessary. Notwithstanding any other provision of this Title, if Tribal Council determines that noncompliance with the Environmental Code presents an imminent and substantial threat to the public health, welfare, or environment and determines, in consultation with the Nation's Attorney General, that it is not practicable to assure prompt protection of the public health, welfare, or environment through a Citation or other enforcement mechanism, the Tribal Council may issue, or direct the EPD to issue, such Emergency Orders as may be necessary to protect the public health, welfare, or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

B. If the violator refuses to obey the Emergency Order, the violator shall be subject to civil liability in Tribal Court. Tribal Court shall have the discretion to impose financial or other penalties as described in Title X, Article IV §4.01 for the violator's failure to obey the Emergency Order.

## Exhibit A: Simulated 1-year and 25-year Capture Zones

Sourced From: Groundwater Modeling for Yavapai-Apache Nation Middle Verde Wells Source Water Protection Assessment. Prepared by Laurel J. Lacher, PhD, RG For The Yavapai-Apache Nation, July 2021, REVISED AUGUST 2022.



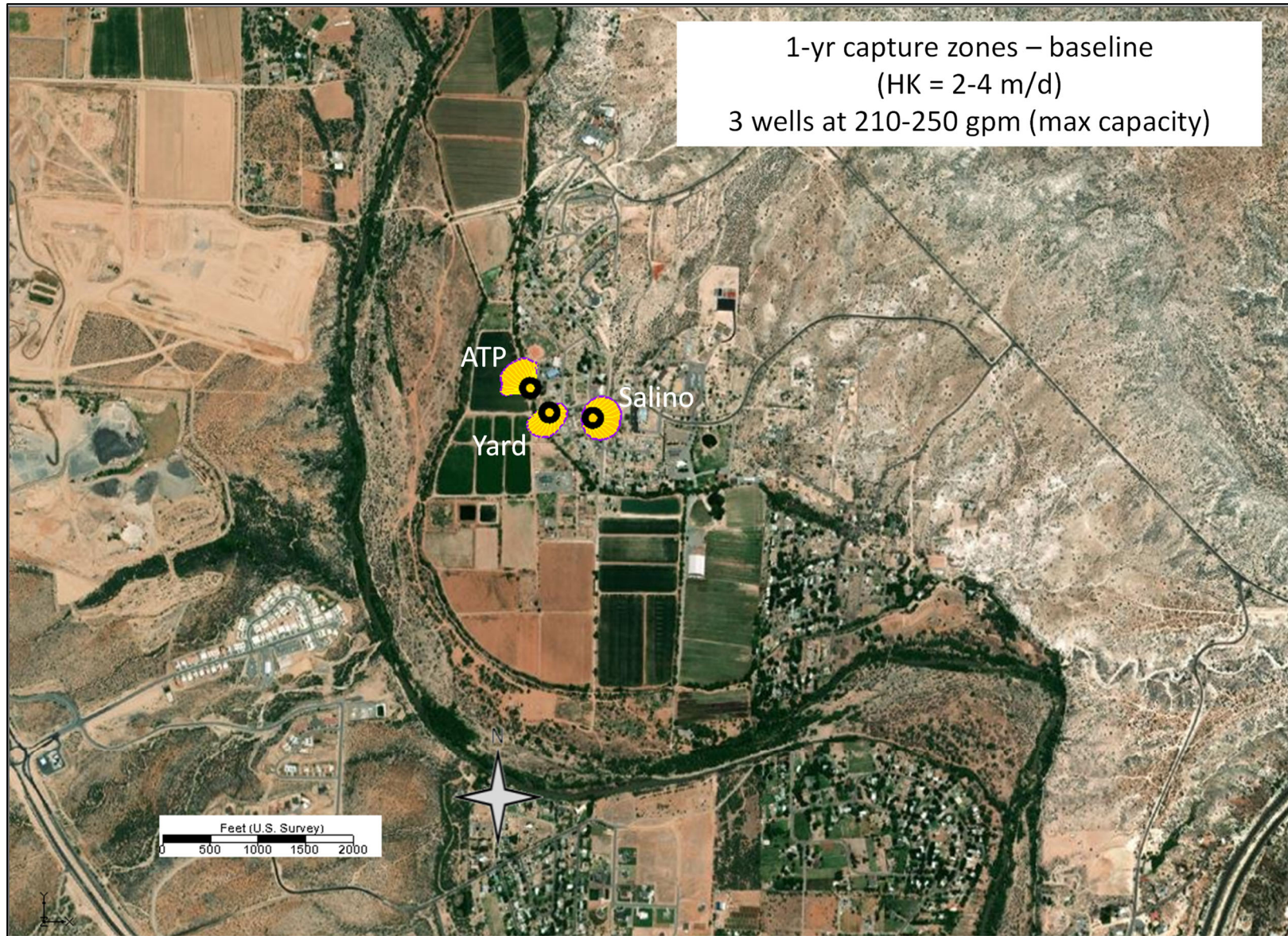


Figure 25. Simulated 1-year capture zones for MV wells with maximum pumping rates and baseline HK.



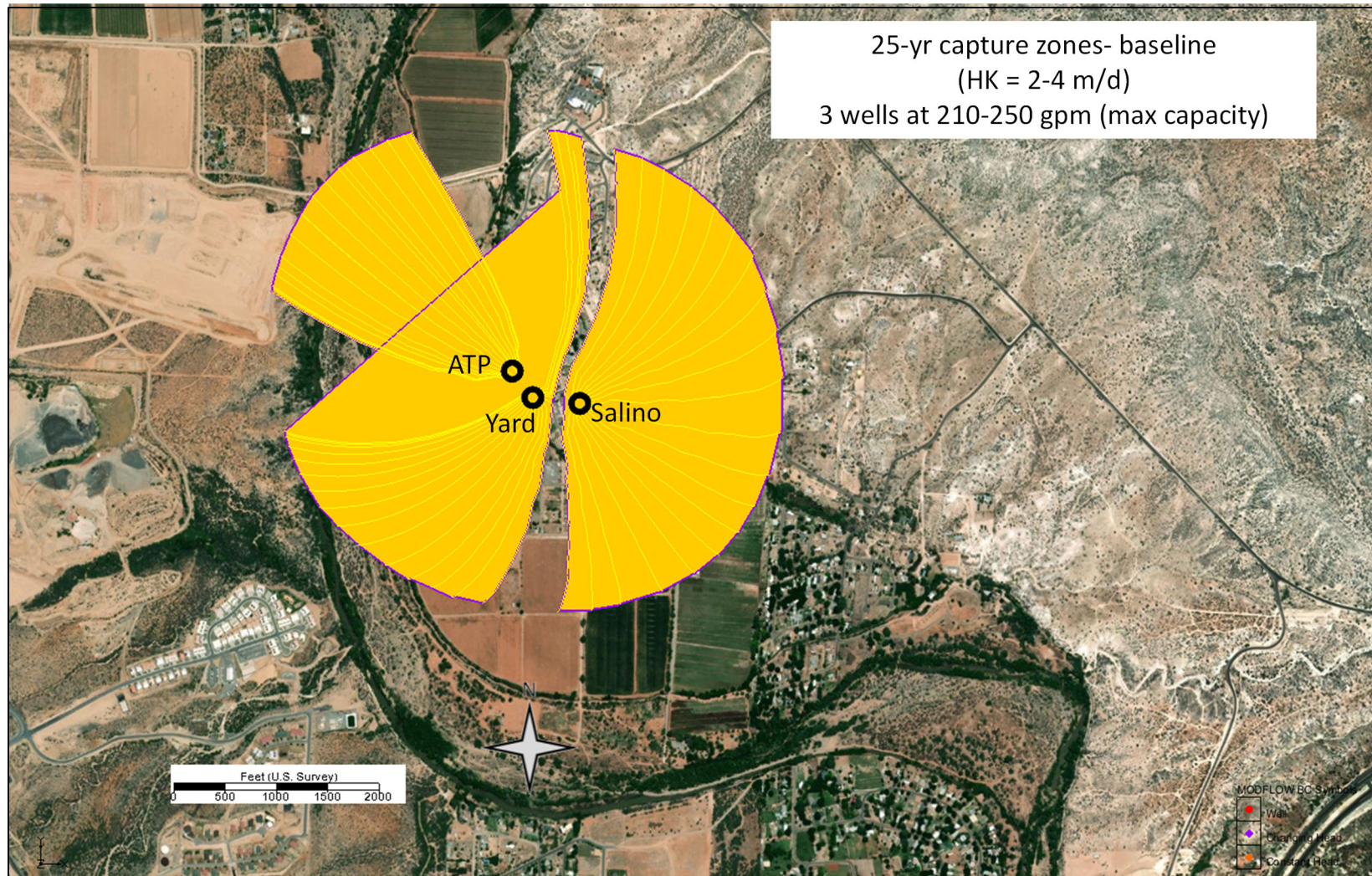


Figure 28. Simulated 25-year capture zones for MV wells with maximum pumping rates and baseline HK.