




**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**SYCUAN BAND OF THE KUMEYAAY NATION
BUSINESS LEASING REGULATIONS**

The attached Business Leasing Regulations, submitted by the Sycuan Band of the Kumeyaay Nation (listed in the Federal Register, Vol. 86, No. 18 FR 7557 (January 29, 2021) as the Sycuan Band of the Kumeyaay Nation), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 18 pages and adopted by the General Council of the Sycuan Band of the Kumeyaay Nation on April 28, 2021, is hereby approved.

Dated: OCT 29 2021



Bryan Newland
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

SYCUAN BAND OF THE KUMEYAAY NATION
BUSINESS LEASING REGULATIONS

I. PURPOSE, INTENT AND SCOPE

The Sycuan Band of the Kumeyaay Nation is a sovereign Indian tribal government. The purpose of these Regulations is to implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. §415, as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. 112-151, (2012), codified at 25 U.S.C. 415(h) (HEARTH Act) for business leases on Tribal trust land within the Sycuan Reservation and any lands that may become Tribal Land within and beyond the exterior boundaries of the Sycuan Reservation in the future. In addition, these Regulations are intended to promote political self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands held in trust for the Tribe.

Scope: The scope of these regulations shall apply to business leases of Tribal Land approved by the Tribe and does not apply to: (i) leases of individual land; (ii) fee lands; or (iii) mineral leases.

II. AUTHORITY

These Regulations are authorized by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. 112-151, (2012), codified at 25 U.S.C. 415(h) (HEARTH Act), its implementing regulations, and Sections IV and V of the Constitution of the Sycuan Band of the Kumeyaay Nation (“Constitution”). The applicable law means all applicable Tribal and federal laws affecting Tribal Land and any Business Lease issued hereunder, including with particularity these regulations.

III. DEFINITIONS

A. **“Approving Entity”** means the Tribal Council and shall have authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe and to approve or disapprove leasing transactions as executed by the Executing Official, which include but are not limited to: Lease issuance, Lease amendment or modification, Subleasing, Lease Assignment, and Lease termination.

B. **“Approval”** means written authorization by the Tribal Chairman or a delegated Tribal Council member.

C. **“Assignment”** means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease.

D. **“Best Interest of the Tribe”** means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Tribal Land, increasing employment and revenue for the Tribe, and preserving the sovereignty of the Tribe.

E. **“BIA”** means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior.

F. **“Bond”** means a security interest providing security for the performance of a duty or payment of a debt. The bond can be furnished by the lessee or by a third-party surety.

G. **“Business Day”** means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Tribal Government is closed to the public.

H. **“Business Lease”** means the same as Lease.

I. **“Development Period”** means the time-period between approval of the Lease to substantial completion of improvements on the Lease Premises.

J. **“Day”** means a calendar day, unless otherwise specified.

K. **“Environmental Review Process”** means the procedures to identify and evaluate any Significant Effect on the Environment of a Project.

L. **“Environmental Reviewer”** means the individual or firm designated by the Tribal Council to undertake the Environmental Review Process pursuant to, and in accordance with Article VIII of these Regulations.

M. **“Executing Official”** means the Chairman of the Tribe or his designee who is authorized by the Approving Entity to execute leases, subleases, amendments or assignments.

N. **“Fair Annual Lease Value”** means the amount of rental income that a leased tract of land would most probably command in a competitive market reflecting all conditions and restrictions of the Lease terms, including duration, rental adjustments, use restrictions, expense obligations or other considerations that drive commercial viability of a proposed Project or

development of land.

O. **“Holdover”** means circumstances in which a Lessee remains in possession of the Lease Premises after the Lease term expires or has been terminated or cancelled.

P. **“Lease”** means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Tribal land, for a specified purpose and duration. The Lessee's right to possess will limit the Tribe's right to possess the Lease Premises only to the extent provided in the Lease.

Q. **“Lease Decision”** means the decision of the Approving Entity following completion of the Environmental Review Process with respect to approval of the issuance, amendment, sublease or assignment of a Lease.

R. **“Lease Premises”** means the Tribal Land that is subject to a Lease approved by the Tribe pursuant to these Regulations.

S. **“Leasehold Mortgage”** means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owned by the Lessee to a lender or other mortgagee.

T. **“Lessee”** means person or entity who has acquired a legal right to possess Tribal Land by a Lease authorized by the Tribe by these Regulations.

U. **“Lessor”** means the Tribe who, as the owner of Tribal Land, conveys possessory interests in Tribal Land that is subject to a Lease authorized and approved under ~~by~~ these Regulations.

V. **“LTRO”** means the Land Titles and Records Office of the Bureau of Indian Affairs (“BIA”).

W. **“Managing Entity”** means the Tribal Council or its designee having authority to manage all Leases under these Regulations, and pursuant to Article V of the Sycuan Constitution.

X. **“Mortgagee”** means the holder of a Leasehold Mortgage.

Y. **“Project”** means any improvement, proposed development, or economic development activity occurring on or to Tribal Land that is subject to a Lease.

Z. **“Public”** for purposes of the Environmental Review Process means Sycuan tribal members, Sycuan tribal departments, residents within the Tribe's reservation or any person or entity that has the potential to be significantly affected by the Lease or the Lease activity.

AA. “**Significant Effect on Environment**” means a substantial or significant environmental impact, or a potentially substantial, adverse change in the environment, including land; air; water; flora; fauna; ambient noise; cultural areas; and objects of historic, cultural or aesthetic significance.

BB. “**Space Lease**” means a lease of space within an existing facility or building on Tribal Land that is not already leased or Subleased.

CC. “**Sublease**” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.

DD. “**Sublessee**” means a third party who receives a Sublease from a Lessee.

EE. “**Tribal Council**” means the elected representatives of the General Council authorized to exercise the executive powers of the Tribe pursuant to Section V of the Tribe's Constitution.

FF. “**Tribal Land**” means all lands of the Tribe within the limits of the Tribe's reservation and land over which the Tribe exercises governmental power, or any tract in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Indian Reorganization Act of 1934.

GG. “**Tribe**” means the Sycuan Band of the Kumeyaay Nation.

HH. “**Tribal Law**” means the body of the Tribe's law that governs lands and activities under the jurisdiction of the Tribe, including ordinances or other enactments by the Tribe, and tribal court rulings.

II. “**Trust or Restricted Land**” means any tract, held in trust or restricted status by the United States for the benefit of the Tribe.

JJ. “**Trust or Restricted Status**” means that: 1) the United States holds title to the tract in trust for the benefit of the Tribe; or 2) the Tribe holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

IV. BUSINESS LEASE REQUIREMENTS

A. Terms and Conditions. Any Lease authorized and approved under these Regulations shall be governed by terms and conditions set forth in the Lease, these Regulations and applicable law. The terms of the Lease may be amended by written approval of the Lessee and the Approving Entity. The Lessee is responsible for understanding the terms and conditions set forth therein.

B. Duration and Renewal. Unless otherwise expressly provided in the Lease, no Lease shall be approved more than twelve (12) months prior to the first day of Lease term. The Lease term shall not be more than twenty-five (25) years except that a Lease may include an option to renew for two (2) additional terms, provided that each term of which shall not exceed twenty-five (25) years. Unless otherwise expressly provided in the Lease, the Lessee shall notify the Approving Entity in writing of its intent to renew not less than one (1) year prior to the lease's expiration. An option to renew is contingent on: (i) the Approving Entity's consent; (ii) payment of any additional consideration specified in the lease; and that (iii) the Lessee is not otherwise in violation of any lease terms or conditions at the time of the renewal.

C. Obtaining a Business Lease. Information on obtaining a Business Lease shall be available from the Tribal Administrative Office.

1. Any applicant for a Business Lease must submit the following documents to the Approving Entity:
 - (a) Financial statements and related banking references for the Tribe to reasonably determine prospective Lessee's credit history and ability to perform under the Lease, and a business pro forma statement.
 - (b) Site survey and legal description sufficient for purposes of recording with the LTRO.
 - (c) All documents required by the Environmental Reviewer to complete the Environmental Review Process.
 - (d) Any other documents deemed necessary by the Approving Entity or otherwise required pursuant to these Regulations.
2. A Business Lease shall contain the following provisions:
 - (a) The tract, location or parcel of Tribal land subject to the Lease, and the

legal description.

- (b) The purpose and authorized use of the Tribal Land subject to the Lease.
- (c) The parties to the Lease, the address of record, and contact information.
- (d) The Lease effective date, term and provisions for renewal, if any.
- (e) Identification of the party(ies) responsible for ownership of the permanent improvements and the party(ies) responsible for construction, operation, maintenance, management, or removal of the permanent improvements to the Tribal Land subject to the Lease.
- (f) Indemnification of the United States and Lessor for the Lessee's use and occupancy of the Tribal Land subject to the Lease, and that Lessee holds the United States and the Tribe harmless from any loss, liability or damages resulting from the Lessee's use or occupancy of the leased premises; and indemnifies the United States and Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous material from the leased premises that occurs during the lease term.
- (g) Payment and late payment requirements, including, the party to receive the rent, acceptable forms of payments, due date for payments, late payment penalties and interest.
- (h) That the Lessee is required to pay any additional fees, taxes, or assessments associated with the use of the land as determined by entities having jurisdiction.
- (i) If the leased premises are within an Indian irrigation project or drainage district then Lessee must pay all operation and maintenance charges that accrue during the lease term, and that failure to make wither of these payments is a violation lease.
- (j) Due diligence, insurance and bonding requirements. **If** a Bond is required pursuant to Section J of this Article, the Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.
- (k) Removal and restoration plan requirements applicable to the Lease

Premises at expiration, termination, or cancellation of the Lease.

(l) Timelines, if any, for Lease approval, requirements for Approving Entity approval and the Executing Official authorized to execute the Lease.

(m) The requirements for Approving Entity approval of any amendments, Assignments, Subleases, and Leasehold Mortgages, and the Executing Official authorized to execute any amendments, Assignments, Subleases and Leasehold Mortgages during the Lease term.

3. The Approving Entity shall cause the Lease, any amendments, assignments, subleases, leasehold mortgages, renewals and cancellations to be recorded with the LTRO, having jurisdiction over the Tribal Land subject to the Lease.
4. The Approving Entity is responsible for maintaining all records of any Business Lease.
5. The Approving Entity shall cause copies of these Regulations and any Business Lease, amendments, assignments, subleases, leasehold mortgages, renewals or cancellations to be sent to the BIA, Superintendent, Southern California Agency 1451 Research Park Drive, Riverside, CA 92507.
6. Records of activities taken pursuant to these Regulations are the property of the Tribe. Records compiled, developed or received by the Approving Entity in the course of business with the BIA are the property of the Approving Entity and the Tribe.

D. Space Leases. A Space Lease shall be reviewed and approved pursuant to these Regulations.

E. Land Descriptions. A Business Lease shall contain site surveys and legal descriptions based on metes and bounds, rectangular lot and block systems and/or be of sufficient detail to meet recording requirements for the LTRO having jurisdiction over the Tribal Land subject to the Lease. A Space Lease shall contain accurate descriptions of square footage and may include renderings, drawings or other schematics to illustrate the physical location of the space.

F. Appraisals. The Fair Annual Lease Value shall be determined by appraisal, performed by a licensed appraiser pursuant to the Uniform Standards of Professional Appraisal Practices.

G. Fair Annual Lease Value.

1. No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal log maintained in the Lease file, except:
 - (a) Where improvements to Tribal Land which will be subject to a Lease are in the pre-Development Period, e.g., design, permitting and financing;
 - (b) When the Tribe is attempting to attract business development through market incentives; or
 - (c) Where the Tribal Council determines the Lease is in the Best Interest of the Tribe.
2. A Lease may be structured as a flat lease rate.
3. A Lease may be structured as a flat lease rate plus a percentage of gross receipts, provided that the Lessee generates over \$500,000.00 annually in gross receipts.
4. A Lease may be structured on a market indicator.
5. A Lease must specify the date payments are due and that payments shall be made directly to the Tribe.
6. These regulations and the Lease allow for lease payments to be made directly to the Tribe, and the Managing Entity shall maintain documentation of the lease payments sufficient to enable the Secretary of the Interior to discharge the trust responsibility of the United States.
7. Unless provided in the Lease, payments may not be made or accepted more than eighteen (18) months in advance of the due date.
8. A Lease may provide for periodic review and such review may give consideration to prevailing market conditions, exclusive of the improvements or development required by the Lease or the contribution value of such improvements. The periodic review must occur at least every fifth year, in a manner specified in the Lease, and the adjustments will be made by the Managing Entity, and will be based on the fair market rental value and adequacy of consideration for the Tribe. The

Lease must specify upon what criteria the adjustments are based, and the mechanism to resolve disputes arising from the adjustments.

9. A Lease may be structured to allow for payment adjustments, provided that the Lease specifies the terms and procedures for adjustments and the terms and conditions of dispute resolution.
10. A Lease may be amended to allow for payment rate adjustments.
11. The Approving Entity or its designee shall keep written records of the basis to determine Fair Annual Lease Value, or any adjustment thereof. The records shall be presented to the Lessee and included in the Lease file.

H. Environmental Review Process. Subject to Section B(1) of Article VIII the Approving Entity shall not approve a Lease until completion of the Environmental Review Process pursuant to Article VIII. Any Lease approved and executed in violation of this provision shall be null and void.

I. Insurance.

1. A Lessee shall provide insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable improvements on the Lease Premises.
2. The insurance may include, but is not limited to, property, liability or casualty insurance, or other insurances as provided in the Lease.
3. The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.
4. If deemed to be in the Best Interest of the Tribe, the Tribal Council may waive insurance requirements. Such waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

J. Performance Bond.

1. Unless waived in writing by the Tribe pursuant to this Section, the Lessee shall obtain a performance bond in an amount sufficient to secure performance of the obligation of the Lessee pursuant to the Lease. The Bond may guarantee:

- (a) Annual Lease payments.
 - (b) Estimated development costs of the improvements.
 - (c) Any additional amounts necessary to ensure compliance with the Lease.
2. The Tribal Council may waive the bond requirement, or reduce the amount, provided that the waiver or reduction is deemed in to be in the Best Interest of the Tribe. Any waiver pursuant to this Section shall be in writing and maintained with the Lease file. The waiver may be revoked at any time if it ceases to be in the Best Interest of the Tribe.
3. The Bond may be in one of the following forms:
- (a) a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (b), an irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States; or
 - (c) negotiable Treasury securities or surety bond issued by a company approved by the United States Department of the Treasury.
 - (d) the Approving Entity may accept an alternative form of security that provides adequate protection for the Tribe, including without limitation an escrow agreement and assigned savings account.
4. The Lease must include a provision that the obligations of the Lessee and its sureties to the Tribe under the Bond are also enforceable by the United States so long as the land remains in trust or restricted status.

K. Improvements. All Leases shall require Lessees to exercise due diligence and best efforts to complete pre-development and construction of improvements within the schedule specified in the Lease, including a plan that describes the type and location of any permanent improvements to be constructed by Lessee, and a general schedule for construction.

- 1. Lessee, at its expense or as otherwise provide in the Lease, may construct improvements on the Lease Premises if the Lease provides for:
 - (a) site development and construction of improvements to be erected thereon; and
 - (b) a development schedule, including dates for the commencement and completion of construction.

2. Lessee shall provide Lessor written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
3. When requested by Lessor or otherwise required in the Lease, Lessee shall further provide Lessor, in writing an updated schedule for construction.
4. Unless otherwise provided for in the Lease, improvements to the Lease Premises shall become the property of Lessor. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.
5. A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. Unless the terms of the Lease provide otherwise, the Lessor shall have a right of first refusal to purchase Lessee's interest in the Lease.
6. The Lease may provide that at expiration or cancellation of the Lease, the Lessor shall purchase improvements to the Lease Premises at fair market value.
7. Improvements may be subject to taxation by the Tribe.
8. Failure of the Lessee to comply with this Section K will be deemed a violation of the Lease and may lead to cancellation of the Lease pursuant to Article VI of these Regulations.

L. Subleases, Assignments, Amendments and Leasehold Mortgages.

1. Unless otherwise provided herein, Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee.
2. The effective date, term and provision for renewal, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

3. The Lease may authorize Subleases and Assignments, in whole or in part, without approval from Lessor, provided that a copy of the Sublease or Assignment is provided to the Lessor and the following conditions, where applicable, are satisfied and stated in the Lease:
 - (a) There is no event of default under the Lease or these Regulations.
 - (b) Any restrictions and use limitations on the use of the Lease Premises shall continue to apply to any Sublessee or assignee.
 - (c) The proposed assignee or Sublessee submits a current financial statement showing financial capacity to perform Lease obligations.
 - (d) The Lessee shall not be relieved or released from any of its obligations under the Lease.
 - (e) This subsection in no way releases the duties or obligations of the parties under the Lease; which may contain additional restrictions or conditions.
4. The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and improvements to the Lease Premises subject to the approval of Lessor.
5. If a sale or foreclosure of the Lessor's business or assets occurs and the person with a legal right or interest in the property ("Encumbrancer") is also the purchaser, the Encumbrancer may assign the Lease without approval of Lessor or Lessee, provided that the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, provided that the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

V. BUSINESS LEASE MANAGEMENT

- A. Management. Except where required otherwise by agreement or applicable law, the Managing Entity shall manage all Leases pursuant to these Regulations.

- B. Administrative Fees. The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction permitted pursuant to these Regulations, and pursuant to a fee schedule developed by the Tribal Council.

VI. ENFORCEMENT

- A. Generally. The Tribe shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies and covenants. This includes the power to enter the Lease Premises at a reasonable time, with or without notice and assess late payment penalties. In addition, the Secretary of the Interior may, at any reasonable time during the term of the lease, and upon reasonable notice, enter the leased premises to ensure compliance.

B. Defaults.

1. If the Managing Entity determines the Lessee is in default, the Managing Entity shall send the, Lessee a notice of default within five (5) Business Days of the determination. The notice of default may be provided by certified mail, return receipt requested.
2. Within ten (10) days of the receipt of mailing, the Lessee shall:
 - (a) Cure the default and notify the Managing Entity in writing that the default has been cured; or
 - (b) dispute the Managing Entity's determination that the Lease is in default and explain why the Lease should not be canceled; or
 - (c) request additional time to cure the default.

C. Remedies.

1. If the Lessee fails to cure the default within the proscribed period, the Managing Entity may:
 - (a) Cancel the Lease pursuant to these Regulations.
 - (b) Grant an extension of time to cure the default.

- (c) Pursue other remedies, including execution on bonds or collection of insurance proceeds.
 - (d) Exercise a combination of remedies listed in (a) - (c) above.
 - (e) Exercise any other remedy set forth in the Lease.
 - 2. If the Managing Entity cancels a Lease, the Managing Entity shall send the Lessee a cancellation letter within a reasonable time-period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
 - (a) Explain the grounds for Lease cancellation.
 - (b) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease.
 - (c) Notify the Lessee of its right to appeal.
 - (d) Order the Lessee to vacate the Lease Premises within thirty (30) days of receipt of the cancellation letter, if at that time, an appeal pursuant to Article VII is not filed.
 - 3. A cancellation shall become effective thirty-one (31) days after receipt of the cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.
 - 4. If the Managing Entity decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time-period.
- D. Penalties. The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payments penalties. Unless the Lease provides otherwise, interest charges and late-

payment penalties shall apply in the absence of any specific notice to the Lessee from Lessor, and failure to pay such amount shall be treated as a breach of the Lease.

- E. Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the Lease Premises, or undertakes criminal activity thereon, the Tribe may take appropriate emergency action. Lessee must comply with all applicable laws, ordinances, rules and regulations, and must not commit or allow any unlawful conduct, creation of a nuisance, negligence or waste of, or on the leased premises.
- F. Holdover. If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribe may treat such occupation as a trespass. If the holdover is treated as a trespass, the Tribe shall take action to recover possession and pursue additional remedies. Filing to recover possession shall be done pursuant to all applicable Tribal laws, or alternatively, the Tribe may make a written request via certified mail to the BIA for resolution under any applicable federal laws.
- G. Trespass. If a person occupies the Lease Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal law. The BIA may, upon reasonable notice from the Tribe and at the BIA's discretion, enforce the provisions of, or cancel, a Lease.

VII. APPEALS

- A. Appeals. The Lessee or interested party may appeal any determination of the Managing Entity made pursuant to these Regulations, within ten (10) days of the determination. Appeals may be filed in the Sycuan Tribal Court or other designated hearing body as set forth in the Lease. Such appeals shall be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.
- B. Scope of Review. The Sycuan Tribal Court or other designated hearing body shall review whether the Managing Entity's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law. The decision of the Sycuan Tribal Court or other designated hearing body shall be final.

VIII. ENVIRONMENTAL REVIEW PROCESS

- A. Generally. Unless exempt under Subsection B below, the Approving Entity shall not approve a Lease until the Lessee has completed the Environmental Review Process pursuant to this Article. Leases approved and executed without compliance with this Section shall be null and void. If historic properties, archeological resources, human remains, or any other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the property shall cease and the Lessee will contact the Tribe to determine how to proceed.
- B. Threshold Determination.
1. Lessee not subject to Environmental Review Process: If the Environmental Reviewer determines that the Project would not impact, alter, or otherwise cause physical disturbances to the environment, the Lease Decision is exempt from additional requirements of the Environmental Review Process.
 2. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Project might be expected to: (i) impact, (ii) alter, (iii) disturb; or (iv) otherwise cause a physical disturbance to the environment, the Lessee must fulfill the requirements of: the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the Project.
- C. Action on Lease Decision. If the Environmental Reviewer determines that a Lease Decision is subject to the Environmental Review Process, the Approving Entity may not consider the Lease Decision until the Environmental Reviewer closes the Environmental Review Process.
- D. Environmental Review Process.
1. Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Lease, the Environmental Reviewer shall, at Lessee's expense, cause the preparation of a comprehensive environmental impact report, analyzing the potentially Significant Environmental Impacts of the proposed Project on the environment.

The environmental impact report shall provide detailed information about Significant Environmental Impacts that the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

- (a) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the environmental impact report is prepared.
 - (b) All Significant Environmental Effects of the proposed Lease.
 - (c) Any mitigation measures proposed, recommended, or required.
2. In addition to the information required pursuant to this Section, the environmental impact report shall also contain a statement, indicating the reasons for determining that various effects of the Lease on the environment are not significant and consequently have not been discussed in detail in the report. The report shall clearly identify and describe all direct Significant Environmental Impacts, giving due consideration to both the short and long-term effects.
 3. Within thirty (30) days following completion of the environmental impact report, the Environmental Reviewer shall publish in a newspaper of general circulation in the area affected by the Lease a copy of the report and shall file a notice of completion with the Tribe. The Environmental Reviewer shall also post the environmental impact report and the notice of completion on its website. The notice of completion shall include all of the following:
 - (a) A brief description of the Project.
 - (b) The proposed location of the Project.
 - (c) An address where copies of the environmental impact report are available.
 4. Notice of a period of thirty (30) days during which the Tribe will receive comments on the environmental impact report.
 5. After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the public and, prior to the approval and execution of the Lease, will respond to all relevant and substantive public comments on any Significant Environmental Effects arising as a result of the proposed Project and proposed or recommended mitigation measures. All responses of the Environmental Reviewer will be posted in the Tribal

Administrative Office for viewing by the public, and will also publish a hyperlink to the responses on its website.

E. Earlier or Concurrent Environmental Review Documents.

1. If within the six (6) months prior to application for a Lease, a Federal agency requires the Lessee to conduct an environmental review under the National Environmental Policy Act ("NEPA"), in connection with a Federal decision that is related to the Lease Decision, the Environmental Reviewer may use those NEPA documents provided the documents meet the requirements of this Article.

IX. SOVEREIGN IMMUNITY

All inherent sovereign rights of the Sycuan Band of the Kumeyaay Nation, a federally recognized Indian tribe, with respect to provisions authorized in these Regulations are hereby expressly reserved, including immunity from unconsented suit. Nothing in these Regulations shall be deemed or construed to be a waiver of any aspect of the Tribe's immunity.

X. SEVERABILITY

If the Sycuan Tribal Court determines any provision of these Regulations to be invalid, void or unenforceable, such provision shall be severed and the remaining provisions shall remain in full force and effect.

XI. AMENDMENTS

The Tribe may amend these Regulations from time to time pursuant to its laws. All substantive amendments must be submitted to and approved by the Secretary of the Interior.

XII. EFFECTIVE DATE

These Regulations shall take effect upon approval by the Secretary of the Interior or authorized designee.