



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

APPROVAL OF

**PASCUA YAQUI TRIBE OF ARIZONA
SOLAR AND RENEWABLE ENERGY LEASING
ORDINANCE**

The attached Solar and Renewable Energy Leasing Ordinance, submitted by the Pascua Yaqui Tribe of Arizona (listed in the Federal Register, Vol. 86, No. 18 FR 7556 (January 29, 2021) as the Pascua Yaqui Tribe of Arizona), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 19 pages and adopted by the Pascua Yaqui Tribal Council on April 14, 2021, is hereby approved.

Dated: DEC 22 2021

A handwritten signature in blue ink, appearing to read "Bryan Newland".

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

Pursuant to the authority delegated by 209 DM 8

ORDINANCE 11-21

**ORDINANCE OF THE PASCUA YAQUI TRIBE ADDING TITLE 8, PART IV,
CHAPTER 4-6 OF THE PASCUA YAQUI TRIBAL CODE, “THE PASCUA YAQUI
SOLAR AND RENEWABLE ENERGY LEASING ORDINANCE”**

Section 1. Purpose

To establish The Pascua Yaqui Solar and Renewable Energy Leasing Ordinance and to provide authorization and guidance for its operation.

Be it enacted by the Tribal Council of the Pascua Yaqui Tribe, this Ordinance, which hereby adds new Title 8, Part IV, Chapter 4-6 of the Pascua Yaqui Tribal Code (PYTC) that reads as follows:

**“TITLE 8– REGULATORY CODE
PART IV – PROPERTY**

CHAPTER 4-6 SOLAR AND RENEWABLE ENERGY LEASING ORDINANCE

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**TITLE 8 – REGULATORY CODE
PART IV – PROPERTY
CHAPTER 4-6 SOLAR AND RENEWABLE ENERGY LEASING ORDINANCE**

Legislative History: Enacted in Pascua Yaqui Tribal Code on April 14, 2021 by Resolution No. C04-92-21 and Ordinance No.11-21. This Ordinance supersedes and replaces the Solar and Renewable Energy Leasing Act adopted by Resolution No. C07-174-20, which superseded and replaced the Solar and Renewable Energy Leasing Act originally adopted by Resolution C05-124-16.

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Short Title (8 PYTC § 4-7-10)

This Ordinance shall be known as the “Solar and Renewable Energy Leasing Ordinance.” This Ordinance shall replace and supersede any and all previously adopted versions of Tribal Law referred to as the Solar and Renewable Energy Leasing Act.

Section 20 Authority (8 PYTC § 4-7-20)

The Tribal Council enacts this Ordinance pursuant to the duties of the Tribal Council stated in Article VI, subsections 1(a), (g), (o) and (t) of the Constitution and the legislative powers of the Tribal Council enumerated in Article VI, Section 2 of the Constitution.

Section 30 Purpose (8 PYTC § 4-7-30)

This Ordinance shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), P.L.112 -151, 126 Stat.1150 (July 30, 2012) , by establishing a process under which the Lease of a parcel of Tribal Land by the Tribe will not require the approval of the Secretary of the Interior if the Lease is executed under this Ordinance approved by the Secretary of the Interior. Nothing in this Ordinance is intended to expand the authority or responsibility of the Secretary of the Interior beyond that provided for under applicable federal statutes or regulations.

Section 40 Applicability (8 PYTC § 4-7-40)

- (A) This Ordinance shall apply to Leases providing for the possession or use of Tribal Land for solar and renewable energy use such as Wind Energy Evaluation Lease (WEEL) or Wind and Solar Resource (WSR) Lease. This Ordinance shall not be construed to affect Leases approved prior to effective date of this Ordinance.

(B) This Ordinance shall not apply to any business, commercial, agricultural or residential lease. This Ordinance does not apply to fee lands, individually owned Indian lands or fractionated interests.

Section 50 Controlling Law (8 PYTC § 4-7-50)

(A) To the extent that this Ordinance conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

(B) To the extent that any Lease to which this Ordinance applies conflicts with this Ordinance, this Ordinance shall control.

Section 60 Severability (8 PYTC § 4-7-60)

If any provision of the Solar and Renewable Energy Leasing Ordinance is deemed unlawful, invalid, or preempted by federal law by a court of competent jurisdiction, that provision shall be severed and the remainder of this Ordinance not deemed unlawful, invalid or preempted, shall continue in full force and effect.

Section 70 Effective Date (8 PYTC § 4-7-70)

This Ordinance shall become effective as Tribal Law, for all purposes, on the date of enactment by the Tribal Council and approval by the Secretary of the Interior.

Section 80 Amendment (8 PYTC § 4-7-80)

The Solar Leasing Ordinance may be amended by the Tribe's Tribal Council at a duly called meeting of the Tribal Council. Any substantive amendments to the Residential Leasing Ordinance must be submitted to and approved by the Secretary of the U.S. Department of Interior.

SUBCHAPTER B DEFINITIONS

Section 90 Definitions (8 PYTC § 4-7-90)

(A) As used in this Act, the capitalized terms set forth below shall have the following meanings:

- (1) "Assignment" means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of Lessee's rights and assumes all or some of Lessee's obligations under a Lease.

- (2) “Best Interests of the Tribe” means the balancing of interests in order to attain the highest economic income under the circumstances, provide incentives to increase economic development, preserve and enhance the value of Tribal Land, increase employment on Tribal Land, and preserve the sovereignty of the Tribe.
- (3) “Bylaws” means the By-Laws of the Pascua Yaqui Constitution adopted by the Tribal Council.
- (4) “Chairman” and “Vice Chairman” means the Chairman and Vice Chairman selected pursuant to the provisions of Article V, Section 3, of the Constitution, regardless of gender of the person serving in that office.
- (5) “Constitution” means the Constitution of the Tribe.
- (6) “Designated Assignee” means any lender to which a Mortgagee has or may transfer or assign its interest in a Lease or Leasehold Mortgage.
- (7) “Director” means the Director of the Tribe’s Land Department.
- (8) “Environmental Review Process” means the process undertaken by the Tribe to identify and evaluate whether the proposed action of approval of a Lease under this Solar and Renewable Energy Leasing Ordinance will have any Significant Effects on the Environment, as defined in this Solar and Renewable Energy Leasing Ordinance.
- (9) “Land Department” means the Pascua Yaqui Land Department.
- (10) “Lease” means a written contract between the Tribe and a Lessee whereby the Lessee is granted a right to possess Tribal Land, as defined in this Ordinance, for solar or renewable energy use for a specified purpose and duration.
- (11) “Lessee” means a person who has acquired a legal right to possess Tribal Land by executing a Lease of Tribal Land.
- (12) “Leasehold Estate” means the possessory interest in Tribal Land established pursuant to a Lease between a Lessor and a Lessee.
- (13) “Leasehold Mortgage” means a Mortgage, deed of trust, or other instrument that pledges the Leasehold Estate of Lessee as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.
- (14) “Lessor” means the Tribe.
- (15) “LTRO” means the Land titles and Records Office of the BIA.

- (16) “Mortgage” means a lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance or renovate a building or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- (17) “Mortgagee” means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee.
- (18) “Mortgagor” means the Tribe or any person or entity who has executed a Leasehold Mortgage.
- (19) “Permanent Improvements” means buildings, other structures, and associated infrastructure attached to the Premises.
- (20) “Premises” means any portion of Tribal Land, as described in any Lease, and any common areas and grounds appurtenant thereto.
- (21) “Public” for purpose of the Environmental Review Process defined in this Solar and Renewable Energy Leasing Ordinance means any person with the potential to be directly and significantly impacted by the Lease or Lease activity
- (22) “Renewable Energy” means any energy resource that is naturally regenerated and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.
- (23) “Secretary” means the Secretary of the U.S. Department of Interior.
- (24) “Significant Effect on the Environment” means a substantial, or potentially substantial adverse change in the environment of Tribal Land of the Pascua Yaqui Tribe which may include land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural, aesthetic, or socio-economic significance.
- (25) “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.
- (26) “Tribal Council” means the governing body of the Tribe established pursuant to Article V of the Constitution.

- (27) “Tribal Land” means any tract in which the surface estate is held by the United States in trust or restricted status for the benefit of the Tribe, 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 the Tribe or an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).
- (28) “Tribal Law” means all acts, codes, ordinances, or other legislative action of the Tribe, along with all rulings of the Tribe’s Tribal Court or Court of Appeals.
- (29) “Tribe” means the Pascua Yaqui Tribe, a federally recognized Indian tribe.
- (30) “Trust or Restricted Land” means any tract held by the United States in trust or restricted status for the benefit of the Tribe.
- (31) “Trust or Restricted Status” means:
- (a) That the United States holds title to the tract in trust for the benefit of the Tribe; or
 - (b) That 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
- (32) “WEEL” or “Wind Energy Evaluation Lease” means a short-term lease that authorizes possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.
- (33) “WSR Lease” or “Wind and Solar Resources Lease” means a lease that authorizes possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity:
- (a) For resale on a for-profit or non-profit basis;
 - (b) To a utility grid serving the public generally; or
 - (c) To users within the local community (e.g., on and adjacent to a reservation).

SUBCHAPTER C LEASE REQUIREMENTS

Section 100 Approval of Lease (8 PYTC § 4-7-100)

- (A) All Leases shall be subject to the approval of the Tribal Council in accordance with Tribal Law and the Constitution.
- (B) All Leases shall be signed on behalf of the Tribe by the Chairman, or in his or her absence, the Vice Chairman, or a Director delegated with authority to sign.
- (C) After the effective date of this Ordinance, Leases which are approved and executed under this Ordinance, shall be effective without federal approval unless the Secretary of the Interior rescinds approval of this Ordinance and reassumes responsibility for such approval.
- (D) Any Lease which is approved and executed under this Ordinance shall refer to this Ordinance as authority for its execution on behalf of the Tribe.
- (E) Required Lease application information shall include the following:
 - (1) Legal name of applicant, address, telephone and email contact information;
 - (2) If applicant is a corporate entity or business, the nature of the business, the entity structure and any business organization documents, and the State or other jurisdiction of organization of the entity;
 - (3) Description of the Premises to be leased, the proposed use and a proposed Lease term;
 - (4) A written summary of the applicant's business plan or proposal, including a description of the type of Permanent Improvements contemplated, and proposed investments;
 - (5) A financial statement that is adequate to determine the applicant's ability to carry out the proposal and satisfy the terms and conditions of the Lease;

- (6) Environmental assessment materials, if any, prepared in relation to the proposal;
- (7) Prior to final approval of a Lease, an applicant shall provide any Updated information concerning changes, if any, to the any of the lease application information initially submitted pursuant to this Section, prior to the final approval of a Lease;
- (8) Any other information or documents that the Tribe may require; and
- (9) The applicant's signature, and if applicable, the representative capacity of the signer and their authorization to sign if signing on behalf of an entity.

Section 110 Lease Requirements

(8 PYTC § 4-7-110)

(A) All Wind and Solar Resources Leases and all WEELs shall be in writing, and at a minimum, shall:

(1) Describe the tract or parcel of Tribal Land being leased, or on which a parcel being leased is located with reference to a public or private survey plan, if available, in terms sufficient to determine its location and meet the recording requirements for BIA's Land Title and Records Office (LTRO);

(2) State the purpose of the Lease and authorized uses of the Premises;

(3) Identify the parties to the Lease;

(4) State the effective date and the term of the Lease, which for a WEEL shall not exceed an initial three (3) year term with only one option to renew for up to three years, whereas an WSR lease may have an initial term of 25 years with one 25-year option to renew;

(5) If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease, identify the general type and location of each improvement, and the responsibility for constructing, operating, maintaining, and managing WSR or WEEL equipment, roads, transmission lines and related facilities, provide development plans and construction schedules, require reasonable notice to Lessor of the construction of any Permanent Improvement not described in the Lease and address the ownership and disposition of each improvement at the expiration or termination of the Lease; if Permanent Improvement(s) are authorized, the lease must include a provision specifying that the Tribe has the option to waive the removal of the Permanent Improvement(s) and take possession of any such improvement if the Permanent Improvement is not removed within a specified period time; if required by the Tribe, each lease shall include a reclamation and restoration plan;

(6) Identify the party responsible for evaluating the leased premises for suitability;

purchasing, installing, operating, and maintaining WSR Lease or WEEL equipment; negotiating power purchase agreements; and transmission;

(7) Specify all rent and payment requirements, including payment due dates, payee, form of payment, late payment charges and special fees, including any administrative processing fees, taxes and assessments, if any, place of payment, and any interest;

(8) Provisions for periodic review and adjustment of the rent for WSR Leases by the Land Department at least every five (5) years, unless the Tribe determines in a Tribal certification or authorization that no such review is in the Best Interests of the Tribe. Adjustments will be developed by the Land Department, and any adjustments shall be based on increase in fair market value of the lease. Any disputes regarding adjustments will be subject to Subchapter G of this Ordinance;

(9) State the due diligence pursuant to Section 120 of this Ordinance, and insurance requirements that apply, if any; insurance must be in an amount sufficient to protect all insurable Permanent Improvements on the leased premises;

(10) Bonding requirements under this Ordinance: if a performance bond is required, 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.

(11) State the process for amendment, which shall be only in writing signed by both parties, and with the consent of any Mortgagee;

(12) State the governing law, which may include Tribal Law and applicable federal statutes and regulations;

(13) The obligations of the Lessee and its sureties to the Tribe or Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(14) Prohibiting any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(15) Require the Lessee comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

(16) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe with jurisdiction to determine how to proceed and appropriate disposition;

(17) BIA and the Tribe have the right, at any reasonable time during the term of the lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance;

(18) At the request of the Tribe, BIA may, at its discretion, treat as a lease violation any failure by the Lessee to cooperate with a BIA or tribal request to make appropriate records, reports, or information available for BIA or tribal inspection and duplication;

(19) Include other information or attach all other documents which may be required by the Tribe for compliance with this Solar and Renewable Energy Leasing Ordinance or other Tribal Law, or as otherwise required by the Lessor; and

(20) If the leased premises are within an irrigation project or drainage district, the lessee must pay all operation and maintenance charges.

(B) The lease must also contain the following provisions:

(1) The Lessee holds the United States, the Tribe and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises; and

(2) The lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

(C) Where a representative executes a lease on behalf of an Indian landowner or lessee, the lease must identify the landowner or lessee being represented and the authority under which such action is taken.

(D) The Tribe may treat any provision of a lease document that violates Federal law as a violation of the lease.

Section 120 WSR and WEEL Lease Due Diligence

(8 PYTC § 4-7-120)

(A) A WSR Lease or WEEL must include due diligence requirements that require the lessee to:

(1) Commence installation of energy facilities within 2 years for a WSR Lease after the effective date of the WSR lease or within 12 months for a WEEL after the effective date of the WEEL;

(2) If installation does not occur, or is not expected to be completed, within the time period specified in the Lease, provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;

- (3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and
 - (4) Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).
- (B) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.
- (C) Where the lessee is not an entity owned and operated by the tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate.
- (D) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
- (1) The representative has authority to execute a lease;
 - (2) The lease will be enforceable against the lessee; and
 - (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

Section 130 Option to Renew (8 PYTC § 4-7-130)

- (A) If the lease provides for an option to renew, the lease must specify:
- (1) The time and manner in which the option must be exercised or is automatically effective;
 - (2) That confirmation of the renewal will be submitted to the BIA, unless the lease provides for automatic renewal;
 - (3) That the lessee must provide notice of the renewal to any sureties and mortgagees;
 - (4) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
 - (5) Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).
- (B) Any renewal of a lease will be submitted for recording by the LTRO.

Section 140 Payment

(8 PYTC § 4-7-140)

(A) For any Lease of Tribal Land requiring payments to be made to the Tribe, the Lessee shall provide the Tribe with such documentation of the lease payments as the Tribe may request to enable the Tribal Council to enforce the Lease provisions with respect to the Premises.

(B) The Tribe will provide the Secretary with documentation regarding payment of rent for the purpose of allowing the Secretary to discharge the trust responsibility.

Section 150 Trespass and Lease Violations

(8 PYTC § 4-7-150)

Leases of Tribal Land shall require the Lessee to provide the Tribe with such documentation of any trespass or any other violation of the lease as the Tribe may request enable the Tribal Council to determine the appropriate remedy for trespass or lease violation including but not limited to, cancellation or termination of the lease. Negotiated remedies may be considered by the Tribe.

Section 160 Recording (8 PYTC § 4-7-160)

All leases, amendments, assignments, subleases, and mortgages thereto shall be recorded with the Pascua Yaqui Land Department and forwarded to the BIA office having jurisdiction over the Tribe's leasing activities for encoding, imaging and recording with the to LTRO. Lease documents shall also be recorded in the appropriate county register of deeds to the extent required by a Mortgagee.

SUBCHAPTER D ENVIRONMENTAL REVIEW PROCESS AND DOCUMENTATION

Section 170 Requirements for Approval (8 PYTC § 4-7-170)

(A) The Tribal Council shall not approve a Lease under Section 100 of this Ordinance, and neither the Chairman, Vice Chairman nor any other designated elected Tribal officer provided with delegation to sign on behalf of the Tribe, nor the Land Director (if delegated with authority to sign) shall sign a Lease unless:

(1) The Land Department has reviewed the Lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the Premises, and has:

(a) Determined that the uses authorized by the Lease are included within a categorical exclusion stated in Section 180 of this Act and provided that a written determination to the Tribal Council; or

(b) Issued a final decision after following the procedures set forth in Section 190 of this Ordinance; or

(2) The Land Department has provided the Tribal Council with notice that the Tribe has carried out a project or activity funded by a federal agency and that it has relied on the environmental review process of the applicable federal agency rather than following the procedures set forth in this Ordinance.

(3) For the purpose of Environmental Review, it is the intent of this Subchapter D that the Land Department or other tribal entity has qualified staff to conduct an Environmental Review. In the event qualified staff is unavailable, the Department(s) shall engage an independent consultant qualified to conduct an environmental review. The Tribal Council may rely upon the report provided by such staff or independent consultant. The foregoing notwithstanding, the Tribal Council may, in its sole discretion, request an Environmental Review be performed by the appropriate federal agency before final approval of a Lease.

(B) If historic properties, archaeological resources, human remains or other cultural items are discovered on the leased premises during the lease term, or during any time period while any pre-lease examination activity is being conducted by the Lessee on the premises to be leased, all activity will cease and the Lessee will contact the Tribe.

(C) This process is intended to ensure that the Public is informed of and has a reasonable opportunity to comment on any Significant Effects on the Environment from the proposed Lease, as identified by the Tribe, and that the Tribe provides responses to relevant and substantive comments concerning Significant Effects prior to approval of a Lease.

Section 180 Categorical Exclusions (8 PYTC § 4-7-180)

(A) The Tribal Council hereby finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment; and therefore, except as otherwise provided in Section 190, are categorically excluded from the procedures set forth in Section 170:

- (1) Approval of a Lease for solar or Renewable Energy use of an existing improved parcel, including any associated improvements, access roads and utilities; and
- (2) There is no significant change in the use of the Premises under the new lease.

(B) Notwithstanding this Section 180, the Land Department shall follow the procedures set forth in Section 190 if it determines that extraordinary circumstances exist under which the solar and Renewable Energy use of the Premises may, individually or cumulatively, have Significant Effect(s) on the Environment, including without limitation, as set forth below:

- (1) Substantial controversy on environmental grounds; or
- (2) Presence of cultural resources or historic properties.

(C) Non-residential projects involving a change in use or involving construction are not to be categorically excluded from review under Section 180.

Section 190 Environmental Review Process and Documentation (8 PYTC § 4-7-190)

(A) Unless a categorical exclusion applies, the Land Department shall cause the Significant Effect(s) on the environment of the intended uses authorized by the proposed Lease to be identified and evaluated as follows:

- (1) If the Land Department determines that the uses authorized by proposed Lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:

- (a) A Notice of finding of no Significant Effect(s) shall be issued and posted in accordance with Section 200 of this Ordinance for a minimum of fifteen (15) calendar days;
 - (b) If there is a substantial interest in holding a meeting, a meeting shall be held to provide an opportunity for a member of the Public to comment (both verbal and written) on the finding of no Significant Effect;
 - (c) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, regarding the finding of no Significant Effect, which report shall be posted in accordance with Section 200 of this Act for a minimum of fifteen (15) calendar days; and
 - (d) Unless Section 180 applies, a final decision confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, forwarded to Tribal Council for approval and posted in accordance with Section 200 of this Ordinance
- (2) If a Department determines that the proposed Lease will have Significant Effect(s) on the Environment, then it shall cause the following to occur in the order set forth below:
- (a) A draft environmental review which identifies and evaluates any Significant Effect(s) on the Environment of uses authorized by the proposed Lease shall be issued and posted in accordance with Section 200 of this Ordinance for a minimum of thirty (30) calendar days;
 - (b) A meeting shall be held on the draft environmental review to provide an opportunity for a member of the Public and residents of Tribal Land to comment (both verbal and written) on any Significant Effect on the Environment of the uses authorized by the proposed Lease;
 - (c) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, on Significant Effect(s) on the Environment of the uses authorized by the proposed Lease, which report shall be posted in accordance with Section 200 of this Ordinance for a minimum of thirty (30) calendar days;
 - (d) A final environmental review describing the conclusions of the Department on the issues and evidence gathered under this Section shall be issued and posted in accordance with Section 200 of this Ordinance for a minimum of thirty (30) calendar days; and
 - (e) A final decision assessing the potential for any Significant Effect on the Environment associated with the uses authorized by the Lease shall be issued, forwarded to Tribal Council for approval and posted in accordance with Section 200 of this Ordinance.

Section 200 Notices

(8 PYTC § 4-7-200)

All notices required by this Ordinance shall be posted for the number of days specified in this Ordinance in a prominent, noticeable location in the Tribe's Administration Building on the Pascua Yaqui Reservation and the subject property (if applicable), except that only a notice of a draft environmental review shall be posted at the subject property instead of the entire document if the notice posted contains contact and Tribal Administration address information and website information where the entire draft environmental review report may be obtained. The notices required by this Ordinance shall also be posted on a publicly accessible location of the Tribe's website.

SUBCHAPTER E SUBLEASE AND ASSIGNMENT

Section 210 Approval of Sublease and Assignment

(8 PYTC § 4-7-210)

(A) Any amendment, assignment, sublease or leasehold mortgage of an approved Lease will require approval of the Tribal Council, except pre-approved subleases which previously received NEPA prepared by a Federal Agency. Pre-approved subleases are subject to approval by the Director of the Land Department.

(B) All Subleases and Assignments, other than to a Mortgagee, or the Designated Assignee, shall be subject to the approval of the Chairman, or in his or her absence, the Vice Chairman or Director, in a manner consistent with this Ordinance, Tribal Law and the Constitution. All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety agreement.

(C) All approvals of Subleases and Assignments shall be signed on behalf of the Tribe by the Chairman, or in his or her absence, the Vice Chairman or Director.

(D) After the effective date of this Ordinance, all Subleases and Assignments which are approved and executed under this Ordinance shall be effective without federal approval, unless the Secretary of the Interior rescinds approval of this Ordinance and reassumes responsibility for such approval.

Section 220 Requirements

(8 PYTC § 4-7-220)

(A) Any sublease of a parcel of Tribal Land is subject to approval of the Land Department.

(B) A Lessee may assign a Lease in accordance with Subchapter F of this Ordinance.

(C) No Sublease shall relieve the Lessee or sublessor of any liability under the Lease.

(D) In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the Lease, and that the Lease is subject to this Ordinance or law of a political subdivision of the State to the extent applicable.

SUBCHAPTER F LEASEHOLD MORTGAGE

Section 230 Approval of Leasehold Mortgage (8 PYTC § 4-7-230)

- (A) All Leasehold Mortgages under a Lease must be authorized by the Tribal Council, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.
- (B) After the effective date of this Act, all Leasehold Mortgages which are authorized under this Ordinance shall be effective without federal approval, unless the Secretary of the Interior rescinds approval of this Ordinance and reassumes responsibility for such approval.

Section 240 Requirements (8 PYTC § 4-7-240)

- (A) A Lessee may grant a Leasehold Mortgage under Lease in accordance with Subchapter F of this Ordinance.
- (B) Pursuant to Article VI, Section 1, Subsections (a), (g) and (h); and Section 2 of the Constitution, with regard to any Leasehold Mortgage or other encumbrances in Tribal Land, the Tribal Council is empowered by majority vote to authorize and approve by resolution any Leasehold Mortgage of Tribal Land.
- (C) Pursuant to the provisions of this Ordinance, the term of a Lease approved under this Ordinance shall not exceed the terms set forth in Section 110 of this Ordinance.
- (D) All Leasehold Mortgages shall be recorded pursuant to Section 160 of this Ordinance.

SUBCHAPTER G DISPUTE RESOLUTION

Section 250 Complaint (8 PYTC § 4-7-250)

A member of the Public who has reasonable grounds to believe that the Tribe has failed to comply with this Ordinance has the right to file a complaint under this Subchapter.

Section 260 Form of Complaint (8 PYTC § 4-7-260)

The complaint shall be in writing, signed by the member of the Public, describe the alleged noncompliance with this Ordinance which is the subject of the complaint, state all relief requested and be addressed to the Land Director.

Section 270 Informal Resolution (8 PYTC § 4-7-270)

The Land Director shall make reasonable efforts to resolve complaint informally, including but not limited to, attempting to schedule a meeting with the Interested Party for such purpose. All complaints which are resolved through such informal resolution shall be reduced to writing and signed by the Land Director and the member of the Public.

Section 280 Decision (8 PYTC § 4-7-280)

If a complaint is not resolved informally, the Land Director shall issue a decision on the complaint, which shall be in writing, signed by the Land Director. The Land Director shall cause the decision to be delivered to the Interested Party no later than twenty (20) business days after receipt of the complaint. The decision of the Land Director shall constitute a final decision of the Tribe subject to the right of appeal set forth in Section 290 of this Subchapter.

Section 290 Appeal (8 PYTC § 4-7-290)

A member of the Public who has exhausted the Tribal remedies set forth in this Subchapter, may submit a complaint to the Pascua Yaqui Tribal Court, to review the Tribe's compliance with this Ordinance. The standard of review shall be clear and convincing evidence that the action taken was not a reasonable application or interpretation of the Business Site Leasing Ordinance and not in the Best Interests of the Tribe.

Section 300 No Waiver of Sovereign Immunity (8 PYTC § 4-7-300)

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its officials, employees or representatives.”

Section 2

Code Reviewer Discretion

The Code Reviser of the Pascua Yaqui Tribe is hereby authorized to insert this Ordinance to the Pascua Yaqui Code, to include a section on legislative history, and to renumber the sections hereof in accordance with Title 1 Chapter 1 of the Pascua Yaqui Code, the Codification Ordinance, without further action or approval.

Section 3.

This Ordinance shall go into effect immediately upon approval by the Secretary of the U.S. Department of Interior.