



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

**APPROVAL OF**

**EWIIAAPAAYP BAND OF KUMEYAAY INDIANS  
BUSINESS SITE LEASING STATUTE**

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The attached Business Site Leasing Statute, submitted by the Ewiiapaayp Band of Kumeyaay Indians, prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of 19 pages and adopted by the Ewiiapaayp Band of Kumeyaay Indians' governing body on May 8, 2013; Amended August 13, 2013, is hereby approved.

**DEC 10 2013**

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Assistant Secretary - Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Ewiiapaayp Band of Kumeyaay Indians

BUSINESS SITE LEASING STATUTE

CHAPTER ONE  
INTRODUCTION

SECTION:

1.1 Authority and Delegation. This Statute is enacted by the Ewiiapaayp Band of Kumeyaay Indians' (the "Tribe") General Council pursuant to the powers vested to it under Article IV § 1 of the Tribe's Constitution adopted on September 28, 1973, which was approved by the Commissioner of Indian Affairs, ratified by Act of Congress and by tribal law, and which was amended by the Tribe in a duly authorized election on August 5, 2002 and approved pursuant to authority delegated to the Secretary of the Interior on September 6, 2002. Pursuant to Tribal Code Government Code Title 100 § 100.02.1., the General Council hereby expressly authorizes and delegates to the Ewiiapaayp Executive Council ("EC") the power and authority to lease any real property of the Tribe or leases of space within existing facilities on Tribal land that is not already leased in accordance with federal law and this Statute.

1.2 Scope. The scope of application of this Statute shall be limited to all Business Site Leases approved pursuant to 25 U.S.C. § 415 governing leases on Indian trust or restricted lands, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

1.3 Purpose. The purposes of this Statute are to:

- (a) Recognize the authority of the Ewiiapaayp Band of Kumeyaay Indians (the "Tribe"), by and through the EC, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Tribe; and
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), and this Statute.

1.4 Short Title. This Statute shall be known and cited as the "Business Site Leasing Statute."

CHAPTER TWO  
DEFINITIONS

SECTION:

2.1 Definitions. As used in this Statute, the capitalized terms set forth below shall have the following meanings:

- (a) "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 the Lessee's obligations under a Business Site Lease.
- (b) "EC" means the Ewiiapaayp Band of Kumeyaay Indians Executive Council, which is the governmental entity by designation of the General Council, that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment or modification, subleasing, lease assignment or transfer, and lease terminations. The EC has the statutory authority to give final approval for all Business Site Leases and has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribe.
- (c) "Best Interest of the Tribe" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (d) "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.
- (e) "Business Site Lease(s)" means the same as "Lease".
- (f) "Change in Land Use" means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- (g) "WSR Lease" means are leases that authorize possession of Tribal land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associate infrastructure, such as wind turbines and solar panels to harness and/or solar energy to generate and supply electricity. .
- (h) "Development Period" means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (i) "Environmental Review Process" means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a positive or negative environmental impact.
- (j) "Environmental Reviewer" means an official from the Tribe's Environmental Resource Department or as otherwise designated by the EC.
- (k) "Executing Official" means the Tribal Chairman who is a member of the EC who shall execute all Business Site Leases of the Tribe and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

- (l) "Executive Council" means the Tribe's duly elected officials delegated governing authority by the Tribe's General Council.
- (m) "Fair Annual Lease Value" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:
  - (i) Lessee and Lessor are typically motivated;
  - (ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
  - (iii) A reasonable time is allowed for exposure in the open market;
  - (iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (n) "General Council" means the governing body of the Tribe that is all enrolled tribal citizens 18 years of age or older.
- (o) "Holdover" means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- (p) "Lease" means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the Lease.
- (q) "Leasing Decision" in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the EC: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.
- (r) "Lessee" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Statute.
- (s) "Lessor" means the Tribe, who holds property title and conveys the right to use and occupy the property under a lease agreement.
- (t) "Project" means any economic development activity occurring on Tribal lands.
- (u) "Public" means any resident (including an entity) on Tribal Trust Lands.

- (v) "Significant Effect on the Environment" means a substantial, or potentially substantial, adverse or beneficial change in the environment, including impacts on social, cultural, and economic resources, as well as natural resources, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which economic activity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the Tribe by including paramount concerns and policy considerations in the decision-making process, such as social, economic, technical and Tribal security interests.
- (w) "Space Lease" means a lease of space within existing facilities on tribal land that is not already leased, i.e. not subleases.
- (x) "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 a Business Site Lease.
- (y) "Tribe" means the Ewiiapaayp Band of Kumeyaay Indians.
- (z) "Tribal Trust Land" or "Tribal land" means all lands of the Tribe within the limits of the Tribe's Reservation or land over which the Tribe exercises governmental power and that is held in trust by the United States for the benefit of the Tribe.

### CHAPTER THREE BUSINESS SITE LEASE REQUIREMENTS

#### SECTION:

3.1 Terms and Conditions. Leases shall be governed by the standard terms and conditions set forth in the Business Site Lease agreement or equivalent document. The standard terms and conditions may be modified only with the approval of the EC. The Lessee is responsible for understanding these terms and conditions.

3.2 Duration and Renewal. A lease shall be approved within a reasonable period prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessor shall have sole discretion to approve or disapprove a Lessee's request to exercise an option for renewal of a lease term unless a lease provision enumerates the Lessee may exercise an option to renew a lease term without approval of the Lessor. The Lessee shall notify the EC of the request or intent to renew, at least one year before such lease is due to expire.

3.3 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Ewiiapaayp Band of Kumeyaay Indians Executive Council.

- (a) All applicants for a Business Site Lease shall submit the following documents to the EC:

- (i) financial statement
  - (ii) site survey and legal description, if applicable
  - (iii) tribal environmental review where required
  - (iv) other documents as may be required by the EC and pursuant to the EC's Business Site Leasing procedures.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions: (i)
- The tract, location, or parcel of the land being leased;
- (ii) The purpose of the lease and authorized uses of the leased premises; (iii)
- The parties to the lease;
- (iv) The term of the lease;
- (v) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises;
- (vi) Indemnification of United States and Lessor;
- (vii) Payment requirements and late payments, including interest; and
- (viii) Due diligence, insurance and bonding requirements as provided in this Section.
- (c) The EC shall record Business Site Leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the Land Title Records Office (LTRO) with jurisdiction over tribal lands for such purposes.
- (i) The EC is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Secretary.
  - (ii) The EC shall send a copy of these leases and all amendments and renewals for information purposes only, to the Bureau of Indian Affairs Agency having jurisdiction over the Tribal land.
  - (iii) The EC shall send a copy of this Statute and a lease that allows for lease payments directly to the Tribe to the Bureau of Indian Affairs Agency with jurisdiction over the Tribal land.
- (c) Records of activities taken pursuant to this Statute are the property of the Tribe. Records compiled, developed, or received by the EC in the course of business with the Secretary are the property of the United States and the Tribe.

- (d) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

3.4 Space Leases. To the extent these leases require approval pursuant to federal laws and policies, space leases shall be reviewed and approved pursuant to this Statute.

3.5 Land Descriptions. Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

3.6 Appraisal; Local Studies.

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure. Lease valuation shall be valued to ensure that the Tribe receives fair and equitable compensation for private use of Tribal Trust Land. The value of a lease and the decision to lease shall include a determination of consistency with the approved land uses. The EC may, at its discretion, use data from improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the EC and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.
- (b) Alternatively, the Fair Annual Lease Value may be determined by an appraisal performed by a commonly accepted method of appraisal determined by the Tribe at its discretion. An appraisal log describing the method of appraisal and value of trust shall be attached to every Business Site Lease.

3.7 Fair Annual Lease Value.

- (a) No lease shall be approved for less than the present Fair Annual Lease Value as set determined by the EC, except as follows:
  - (i) The lease is in the Development Period;
  - (ii) The EC is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
  - (iii) The EC determines such action is in the Best Interest of the Tribe.
- (b) A lease may be structured at a flat lease rate.
- (c) A lease may be structured at a flat lease rate plus a percentage of gross or net receipts.
- (d) A lease may be structured based on a percentage of gross or net receipts, or based on a market indicator.

- (e) A lease must specify the dates on which all payments are due.
- (f) A lease must specify that the Lessee shall make payments directly to the Tribe.
- (g) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (i) Leases for terms of less than five years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- (j) Leases may be amended to allow for lease rate adjustments.
- (k) The EC shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.

3.8 Environmental Review Process. Unless exempted from this requirement under this Statute, the EC shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Chapter Seven of this Statute. Leases approved and executed without complying with this section shall be null and void.

3.9 Insurance.

- (a) A Lessee shall provide insurance necessary to protect the interests of the Landlord and in amounts sufficient to protect all insurable improvements on the premises.
- (b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.
- (c) The Lessor and the United States must be identified as additional insured parties.
- (d) The EC may waive this requirement if the waiver is in the best interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Tribe's best interest.

3.10 Performance Bond.

- (a) Unless waived in writing by the EC in accordance with this Statute, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and may guarantee:
  - (i) The annual lease payment;



- (ii) The estimated development cost of improvements; and
  - (iii) Any additional amount necessary to ensure compliance with the lease.
- (b) The EC may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The EC shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
- (1) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) negotiable Treasury securities; or
  - (4) surety bond issued by a company approved by the U.S. Department of the Treasury.

3.11 Improvements. All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Site Lease.

- (a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:
  - (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
  - (ii) a general schedule for construction of the improvements.
- (b) Lessee shall provide the EC 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.
- (c) When requested by the EC or otherwise required in the Business Site Lease, Lessee shall further provide the EC, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business site Lease and may lead to cancellation of the Business Site lease pursuant to Chapter 5 of this Statute.
- (e) Improvements to the premises shall become the property of the Tribe unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such

removal.

- (f) A Lessee may develop equity value in the improvements, and sell its interest in the Business Site Lease based on the equity value subject to approval of the EC. The EC shall have a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at expiration, cancellation or termination of the Business Site Lease, the Lessor may have the option to purchase improvements to the premises at fair market value.
- (h) Improvements shall be subject to taxation by the Tribe unless specifically waived by affirmative governmental action of the Tribe.

### 3.12 Subleases, Assignments, Amendments and Encumbrances.

- (a) Subleases, assignments, amendments or encumbrances of any Business Site Lease shall be by written consent of the EC and Lessee, unless otherwise provided herein.
- (b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the EC and execution from the Executing Official, provided a copy of the sublease or assignment is provided to the EC and the following conditions, where applicable, are met and stated in the Business Site Lease:
  - (i) There is no event of default under the Business Site Lease or this Statute;
  - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
  - (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
  - (iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

This Section 3.12(b) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- (c) The lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the EC and execution from the Executing Official.
- (d) If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the lease without approval of the EC or Lessee, provided 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 EC and execution from the Executing Official may be permitted pursuant to the terms and conditions of the lease and applicable encumbrance agreements.

## CHAPTER FOUR BUSINESS LEASE MANAGEMENT

### 4.1 Management.

- (a) Except where required otherwise by agreement or applicable law, the EC shall manage all Business Site Leases pursuant to these regulations.
- (b) The EC shall institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

4.2 Administrative Fees. The EC may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

## CHAPTER FIVE ENFORCEMENT

### SECTION:

5.1 Generally. The EC shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

### 5.2 Defaults.

- (a) If the EC determines the Lessee is in default, the EC shall send the Lessee a notice of default promptly following the determination. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within 10 business days of the mailing, the Lessee shall:
  - (i) Cure the default and notify the EC in writing that the default has been cured.
  - (ii) Dispute the EC's determination that the lease is in default and explain why the lease should not be canceled; or
  - (iii) Request additional time to cure the default.

### 5.3 Remedies.

- (a) If the Lessee fails to cure the default within the prescribed period, the EC may:

- (i) Cancel the lease pursuant to these regulations;
  - (ii) Grant an extension of time to cure the default;
  - (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
  - (iv) Any combination of remedies listed above; or
  - (v) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the EC cancels a Business Site Lease, the EC shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
- (i) Explain the grounds for cancellation;
  - (ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the lease;
  - (iii) Notify the Lessee of its right to appeal; and
  - (iv) Order the Lessee to vacate the premises within 30 days of mailing of receipt of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective 31 days after mailing. 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.
- (d) If the EC 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.

5.4 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 payment 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 the EC, and the failure to pay such amount shall be treated as a breach of the lease.

5.5 Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the EC may take appropriate emergency action.

5.6 Holdover. If a Lessee remains in possession after the expiration or cancellation of a

lease, the EC shall treat such occupation as a trespass. The EC shall take action to recover possession and pursue additional remedies pursuant to § 5.7.

5.7 Trespass. If a person occupies the premises without the EC's approval, the EC may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law, or alternatively, the EC may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

## CHAPTER SIX APPEALS

### SECTION:

6.1 Appeals. The Lessee or interested party may appeal a determination of the EC, within ten (10) days of the determination. Appeals may be filed with the Executive Council or other hearing body as set forth in the business site lease management plan or policy. 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.

6.2 Scope of Review. The General Council, Tribal Court or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the General Council, or Tribal Court or other hearing body shall be final.

## CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS

### SECTION:

7.1 Generally. Unless exempt under this Chapter, the EC shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Chapter and applicable Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

#### 7.2 Threshold Determination.

- (a) Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Tribe, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.
- (b) Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural

resources of the Tribe, 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) **Statutory Exemption for Leases in Gaming Facility:** Consistent with Tribe's Tribal-State Gaming Compact, Leasing Decisions involving Business Site Leases proposing use of space within the footprint of a Gaming Facility shall be exempt from the Environmental Review Process, and the EC shall not be required to prepare a TEIR under Section 7.4 of this Chapter.

7.3 **Action on Leasing Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the EC may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

7.4 **Environmental Review Process.**

- (a) Unless an exemption applies or a lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the EC shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. For purposes of this Chapter 7, the public means any resident (including an entity) on Tribal Trust lands subject to the lease. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:
  - (i) 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 notice of preparation is issued;
  - (ii) All Significant Effects on the Environment of the proposed Lease;
  - (iii) In a separate section:
    - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed; and
    - (2) Any Significant Effect on the Environment that would be irreversible if the lease is executed.
    - (3) Any mitigation measures proposed, recommended, or required.

- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

7.5 Notice of Completion of Draft TEIR.

(a) Within no less than thirty (30) days following the completion of the draft TEIR, the EC shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The EC shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:

- (i) A brief description of the Project;
- (ii) The proposed location of the Project;
- (iii) An address where copies of the draft TEIR are available; and
- (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.

(b) To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. §415, the EC will provide public notice by at least one of the procedures specified below:

- (i) Publication of the EC's draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
- (ii) Posting of the Tribe's draft TEIR in the offices of the Tribe and the EC with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

7.5 Response to Public Comments. After the thirty (30) day comment period has ended, the EC will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the EC will provide responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts.

## CHAPTER EIGHT SOVEREIGN IMMUNITY

SECTION:

8.1 Nothing in this Statute shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees.

CHAPTER NINE EFFECTIVE DATE;  
AMENDMENT

SECTION:

9.1 This Statute shall take effect upon its adoption by the General Council and approved by the Secretary of the Interior.

9.2 This Statute may be amended by a majority vote of the General Council at a duly called General Council meeting at which a quorum is present. All substantive amendments to this Statute must be submitted to and approved by the Secretary of the Interior.

CERTIFICATION

I, the undersigned, as Chairman of the Ewiiapaayp Band of Kumeyaay Indians, do hereby certify that the General Council is composed of five (5) members of which five (5) are voting members and of which four (4) were present, constituting a quorum at a Special Meeting thereof; duly and regularly called, noticed, convened and held this 8<sup>th</sup> day of May, 2013; and that this Business Site Leasing Statute was duly adopted by a vote of four (4) in favor, zero (0) opposed, and zero (0) abstaining, and that said Resolution has not been rescinded, amended or modified in any way.

Dated this 8<sup>th</sup> day of May, 2013.



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Robert Pinto Sr., Chairman



ATTEST: \_\_\_\_\_

Harlan Pinto, Jr., Secretary/Treasurer