



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

APPROVAL OF

**PECHANGA BAND OF LUISEÑO MISSION INDIANS
BUSINESS SITE LEASING ORDINANCE**

The attached Business Site Leasing Code, submitted by the Pechanga Band of Luiseño Mission Indians (listed in the Federal Register, 82 FR 10 (Jan. 17, 2017) as the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California, and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 23 pages and adopted by the Pechanga Band of Luiseño Mission Indians General Membership on January 29, 2017, is hereby approved.

Dated: December 28, 2017

Principal Deputy Assistant Secretary-Indian Affairs
Exercising the Authority of the Assistant Secretary -
Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

PECHANGA BAND OF LUISEÑO MISSION INDIANS CODES

TITLE 6 BUSINESS SITE LEASING CODE

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6.1 COMMERCIAL AREAS

6.1.1 GENERAL PROVISIONS

6.1.1.1 Authority and Delegation. This Code is enacted by the Pechanga Band of Luiseño Mission Indians General Membership pursuant to the powers vested to it under the Constitution and Bylaws, adopted December 10, 1978, and as may be amended from time to time ("Constitution"). Pursuant to Article VI, Section 1 of the Constitution, the General Membership hereby expressly authorizes and delegates to the Tribal Council the power and authority to lease any real property of the Band held in trust, or lease space within facilities on Tribal Trust Land in accordance with federal law and this Code.

6.1.1.2 Scope. This Code shall apply only to Leases of Tribal Trust Land for Business Purposes approved by the Band pursuant to this Code, in accordance with 25 U.S.C. §415(h)(1). This Code does not apply to mineral leases, leases of individually allotted land, or to existing or future leases entered into by the Band under 25 U.S.C. §415(a), nor does it apply to any Lease with a term exceeding the maximum lease term authorized by 25 U.S.C. §415(h). This Code does not limit the authority of the Band and any prospective Lessee to enter into a Lease for a term not to exceed 75 years as currently authorized under the provisions of 25 U.S.C. §415(a). Nothing herein shall be construed to affect the terms and conditions of existing Leases, if any.

6.1.1.3 Purpose. The purposes of this Code are to:

- (a) Recognize the authority of the Band by and through the Tribal Council, to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote self-determination, exercise sovereignty over Tribal Trust Land, encourage economic self-sufficiency, and increase business activity and employment on lands of the Pechanga Band of Luiseño Indians;
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), H.R. 205, 112th Cong. (2012) (25 U.S.C. §415(h), and this Code; and

- (d) Inform prospective Lessees of the nature, requirements, and process of leasing Tribal Trust Lands.

6.1.1.4 **Short Title.** This Code shall be known and cited as the “Business Site Leasing Code.”

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6.1.2 DEFINITIONS

As used in this Code, 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 of the Lessee's obligations under a Business Site Lease.
- (b) "*Best Interest of the Band*" 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 Tribal Trust Land, and preserve the sovereignty of the Band.
- (c) "*Band*" means the Pechanga Band of Luiseno Mission Indians.
- (d) "*BIA*" means the Bureau of Indian Affairs, United States Department of the Interior.
- (e) "*Business Purpose*" means commercial purposes, including but not limited to retail, office, manufacturing, storage, and single purpose or mixed use projects designed for use by any number of Lessees; as well as for religious, educational, recreational, cultural, or other public purposes.
- (f) "*Business Site Lease(s)*" means the same as "Lease."
- (g) "*Compact*" means the tribal-state compact entered into between the Band and the State of California and approved by the Secretary as published in Federal Register Notice on December 5, 2016, governing the conduct of class III gaming activities by the Band pursuant to Indian Gaming Regulatory Act.
- (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 Significant Effect on the Environment.

- (j) “*Environmental Reviewer*” means an official from the Band’s Environmental Department or as otherwise designated by the Tribal Council or their designee, as determined by the Tribal Council.
- (k) “*Executing Official*” means the Tribal Chairman or his designee, as determined by the Tribal Council, who shall execute all Business Site Leases of the Band, and take all necessary and proper action on Leases and Subleases including amendments, modifications, Assignments, and cancellations of Leases and Subleases.
- (l) “*Fair Market Rental*” means the amount of rental income that a Lease would most probably command in an open and competitive market utilizing a market analysis, appraisal or other appropriate valuation methods, or as determined by competitive bidding.
- (m) “*Holdover*” means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires, is cancelled or terminated.
- (n) “*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.
- (o) “*Leasing Decision*” means the following type of lease transactions that will be acted on by the Tribal Council or their designee, as determined by the Tribal Council: lease issuance, lease amendment or modification, subleasing, lease Assignment or transfer, and tenant leases.
- (p) “*Lessee*” means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this Code.
- (q) “*Lessor*” means the Tribal Council or their designee, as determined by the Tribal Council, on behalf of the Band, who holds property title and conveys the right to use and occupy the property under a Lease.
- (r) “*LTRO*” means the Land Titles and Records Office having jurisdiction of the Band’s leasing activities.
- (s) “*Project*” means any economic development activity occurring on Tribal Trust Lands.
- (t) “*Public*” means for purposes of this Code the General Membership of the Band and other persons who are authorized by statute or regulation.
- (u) “*Significant Effect on the Environment*” means a substantial, or potentially substantial, adverse change to the environment of the Pechanga Indian Reservation, including land, air, water, minerals, flora, fauna, ambient noise, socioeconomic, cultural areas and objects of historic, cultural or aesthetic significance.
- (v) “*Space Lease*” means a Lease of space within existing facilities located on Tribal Trust Land.

- (w) “*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.
- (x) “*Tribal Council*” means the duly elected governing body of the Band pursuant to the Constitution and which is the governmental entity, or its designee, that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Band, 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, tenant leases and lease terminations. The Tribal Council has the statutory authority to give final approval for all Business Site Leases and has the authority to delegate some or all of its statutory authority to the appropriate tribal entities, as may be determined by the Tribal Council.
- (y) “*Tribal Trust Land*” means all lands of the Band within the limits of the Band’s Reservation or land over which the Band exercises governmental power and that is held in trust by the United States for the benefit of the Band.

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6.1.3 BUSINESS SITE LEASE REQUIREMENTS

6.1.3.1 Terms and Conditions. Leases shall be governed by the terms and conditions set forth in the Business Site Lease. The terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions.

6.1.3.2 Approval Process. After all the requirements of this Code have been met, a proposed Business Site Lease shall be presented to the Tribal Council for approval. The approved Lease shall be executed on behalf of the Band by the Executing Official.

6.1.3.3 Duration and Renewal. No Lease shall be approved more than 12 months 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.

6.1.3.4 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Band.

- (a) All applicants for a Business Site Lease shall submit the following documents to the Tribal Council:
 - (i) Financial statements sufficient to inform the Tribal Council of the economic position of the applicant;
 - (ii) Site survey and legal description, if applicable;
 - (iii) Documentation evidencing completion of the tribal environmental review where required; and
 - (iv) Other documents as may be required by the Tribal Council and pursuant to the Tribal Council'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, with a legal description and acreage sufficient for recording.
 - (ii) The purpose of the Lease and authorized uses of the leased premises;
 - (iii) The parties to the Lease including address and contact information;
 - (iv) The term of the Lease;
 - (v) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises, including restoration or reclamation of the leased premises upon expiration, termination, or cancellation of the Lease, if applicable;
 - (vi) Indemnification of United States and Lessor;
 - (vii) Payment requirements, including but not limited to: guaranteed minimum annual rent, payment due date, interest, late charges, additional land rent, additional rent, and rental adjustments;
 - (viii) Due diligence, insurance and bonding requirements as provided in this Section;
 - (ix) Acknowledgement of compliance with all applicable Tribal laws and regulations; and
 - (x) Tribal Historic Preservation Officer certification when a Lease includes ground disturbance for construction purposes.
- (c) The Band shall record Business Site Leases, Subleases, Assignments, amendments, encumbrances, renewals, modifications and cancellations with:
- (i) Land Title and Records Office
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
 - (ii) The Band is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Secretary, the Environmental Department, and if required by the Tribal Council, to the Housing Department, if any. A courtesy copy shall also be provided to the Pechanga Office of the General Counsel.
 - (iii) The Band shall send a copy of these Leases and all amendments and renewals to the Superintendent, Southern California Agency, Bureau of Indians Affairs, 1451 Research Park Drive, Riverside, CA 92507-2154.
 - (iv) The Band shall send a copy of this Code and a Lease that allows for lease payments directly to the Band to the Superintendent, Southern California

Agency, Bureau of Indians Affairs, 1451 Research Park Drive, Riverside,
CA 92507-2154.

- (d) Records of activities taken pursuant to this Code are the property of the Band. Records compiled, developed, or received by the Tribal Council in the course of business with the Secretary of the Interior are the property of the Band and the United States.
- (e) 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.

6.1.3.5 Space Leases. Space Leases shall be reviewed and approved pursuant to this Code.

6.1.3.6 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 within the applicable site survey and legal description.

6.1.3.7 Appraisal; Local Studies.

- (a) The Fair Market Rental shall be determined by an appraisal or equivalent procedure performed by the Band utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Tribal Council and deemed to be in the Best Interest of the Band. An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.
- (b) Alternatively, the Fair Market Rental shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.

6.1.3.8 Fair Market Rental and Payment Requirements.

- (a) No Lease shall be approved for less than the present Fair Market Rental as set forth in the appraisal, except as follows:
 - (i) The Lease is in the Development Period;
 - (ii) The Band is providing an incentive for businesses to locate on Tribal Trust Lands, and deems it in the Best Interest of the Band to provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or

- (iii) The Tribal Council determines such action is in the Best Interest of the Band.
- (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 receipts, if the Lessee is a business located in a shopping center or mall, or the Lessee generates over \$1,000,000.00 annually in gross receipts.
- (d) A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) A Lease must specify the dates upon which all payments are due.
- (f) A Lease must specify that the Lessee shall make payments directly to the Band.
- (g) Lease payments must be made directly to the Band.
- (h) The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvements or development required by the contract or the contribution value of such improvements.
- (i) Leases may be structured to allow for lease rate adjustments.
- (j) Leases may be amended to allow for lease rate adjustments.
- (k) The Tribal Council shall keep written records of the basis used in determining the Fair Market Rental, 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.

6.1.3.9 Environmental Review Process. Unless exempted from this requirement under this Code, the Tribal Council shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Section 6.1.7 of this Code. Leases approved and executed without complying with this section shall be null and void.

6.1.3.10 Insurance.

- (a) A Lessee shall provide insurance necessary to protect the interests of the Band 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 Band and the United States must be identified as additional insured parties if insurance is required.

- (d) The Tribal Council may waive this requirement if the waiver is in the Best Interest of the Band. The waiver may be revoked at any time if the waiver ceases to be in the Band's best interests.

6.1.3.11 Performance Bond.

- (a) Unless waived in writing by the Tribal Council in accordance with this Code, 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 purposes 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 Tribal Council may waive the bond requirements, or reduce the amount, if doing so is in the Best Interests of the Band. The Tribal Council shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
 - (i) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (ii) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
 - (iii) Negotiable Treasury securities; or
 - (iv) Surety bond issued by a company approved by the U.S. Department of the Treasury.

6.1.3.12 Improvements. All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction and removal, if applicable, 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 and removal of the improvements.
- (b) Lessee shall provide the Tribal Council with 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 Tribal Council or otherwise required in the Business Site Lease, Lessee shall further provide the Tribal Council, 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 Section 6.1.5 of this Code.
- (e) Improvements to the premises shall become the property of the Band unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall specify, unless waived by the Band, the maximum time allowed for such removal, the Lessee's responsibility for such removal, and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Band.
- (f) A Lessee may develop equity value in the improvements, and sell its interest in the Business Site Lease based on the equity value. The Band has 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 shall purchase improvements to the premises at fair market value.
- (h) Improvements may be subject to taxation by the Band.

6.1.3.13 Subleases; Assignments; Amendments; Encumbrances.

- (a) Subleases, Assignments, amendments, or encumbrances of any Business Site Lease shall be by written consent of the Tribal Council 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 Tribal Council and execution from the Executing Official, provided a copy of the Sublease or Assignment is provided to the Tribal Council 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 Code;
 - (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 6.1.3.13(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) 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 Tribal Council 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 Tribal Council and executive from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

6.1.3.14 Taxes. Subject only to applicable Federal law, no fee, tax, assessment, levy or charge imposed by a State or political subdivision shall apply to permanent improvements, activities under any Lease, or the leasehold or possessory interest on Tribal Trust Land. The Band may impose its own taxes or other charges on the same pursuant to the Tribal Tax Code and Federal law.

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6.1.4 BUSINESS SITE LEASE MANAGEMENT

6.1.4.1 Management.

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

6.1.4.2 Administrative Fees. The Tribal Council may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative action.

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6.1.5 ENFORCEMENT

6.1.5.1 Generally. The Tribal Council 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. BIA may, upon reasonable notice from the Band, and at its discretion, enforce the provisions, or cancel, a Lease.

6.1.5.2 Applicable Law. Except where otherwise required by agreement or applicable law, the Tribal Council shall manage all Leases pursuant to this Code. The law that will apply to all Leases authorized under this Code will be in the following order: federal law, Tribal law (including, but not limited to, this Code), and applicable State law.

6.1.5.3 Defaults.

- (a) If the Tribal Council determines the Lessee is in default, the Tribal Council 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.
- (b) Within ten (10) days of the mailing, the Lessee shall:
 - (i) Cure the default and notify the Tribal Council in writing that the default has been cured;
 - (ii) Dispute the Tribal Council'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.

6.1.5.4 Remedies.

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

- (i) Cancel the Lease pursuant to this Code;
 - (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 the remedies listed above; or
 - (v) Any other remedy set forth in the business site lease management plan or policy.
- (b) If the Tribal Council cancels a Business Site Lease, the Tribal Council 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 Tribal Council 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.

6.1.5.5 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 Tribal Council, and the failure to pay such amount shall be treated as a breach of the Lease.

6.1.5.6 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 Tribal Council may take appropriate emergency action.

6.1.5.7 Holdover. If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribal Council shall treat such occupation as a trespass.

6.1.5.8 Trespass. If an individual or entity takes possession of, or uses the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable tribal law. Filing shall be pursuant to tribal laws, or alternatively, the Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

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6.1.6 APPEALS

6.1.6.1 Appeals. The Lessee or interested party may appeal a determination of the Tribal Council within ten (10) business days of the determination. Appeals may be filed with the Tribal Court 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.

6.1.6.2 Scope of Review. The Tribal Court 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 Tribal Court or other hearing body shall be final.

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6.1.7 ENVIRONMENTAL REVIEW PROCESS

6.1.7.1 Generally. Unless exempt under this Section, the Tribal Council shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Section and applicable tribal regulations, if any. Leases approved and executed without compliance with this Section shall be null and void. This process is intended to comply with the environmental review requirements of the HEARTH Act, ensuring that:

- (a) Any significant effects of the proposed action on the environment are identified and evaluated;
- (b) The Public is informed of and has a reasonable opportunity to comment on any proposed action as identified by the Tribal Council which results in a significant environmental impact as determined by the Tribal Council; and
- (c) The Tribal Council provides responses to relevant and substantive Public comments on such impacts before a Lease is approved.

6.1.7.2 Threshold Determination.

- (a) Lessee Not Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment, 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 have a Significant Effect on 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 or emission or effluent associated with the Project.

6.1.7.3 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 Tribal Council may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable tribal environmental regulations.

6.1.7.4 Environmental Review Process.

- (a) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, before the execution of any Business Site Lease, the Tribal Council 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. 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);
 - (ii) All Significant Effects on the Environment of the proposed Lease, including the disturbance of hazardous waste or the presence of endangered species;
 - (iii) In a separate section:
 - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed.
 - (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.

6.1.7.5 Notice of Completion of TEIR

- (a) Within no less than thirty (30) days following the completion of the TEIR, the Tribal Council shall file a copy of the TEIR and a Notice of Completion with the Band. The Tribal Council shall also post the Notice of Completion and a copy of the 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 TEIR are available; and
 - (iv) Notice of a period of thirty (30) days during which the Band will receive comments on the TEIR.
- (b) The Tribal Council shall provide public notice by at least one of the procedures specified below:
 - (i) Publication of the Tribal Council's 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 Band's TEIR in the Band's offices and the Tribal Council with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

6.1.7.6 Response to Comments. After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Tribal Council will provide written 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. Upon completion of the environmental process, the Tribal Council's written responses will be posted in the Band's Government office with notice to the Public.

PECHANGA BAND OF LUISEÑO MISSION INDIANS CODES

**TITLE 6
BUSINESS SITE LEASING CODE**

**DIVISION 1
COMMERCIAL AREAS**

6 BUSINESS SITE LEASING CODE

6.1 COMMERCIAL AREAS

6.1.8 SOVEREIGN IMMUNITY

6.1.8.1 Nothing in this Code shall be deemed to waive the sovereign immunity of the Band or any of its enterprises, officers, agents or employees.

PECHANGA BAND OF LUISEÑO MISSION INDIANS CODES

**TITLE 6
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6 BUSINESS SITE LEASING CODE

6.1 COMMERCIAL AREAS

6.1.9 EFFECTIVE DATE; AMENDMENTS; NON-SUBSTANTIVE REVISIONS

6.1.9.1 Effective Date. This Code shall take effect upon its adoption by the General Membership and approval by the Secretary of the Interior.


6.1.9.2 Amendments. This Code may be amended or repealed only by a majority vote of the General Membership of the Band, acting at a duly noticed meeting. All major substantive amendments to this Code must be submitted to and approved by the Secretary of the Interior.

6.1.9.3 Non-Substantive Revisions. Non-substantive revisions to this Code, including formatting and other technical revisions that do not affect the substance and meaning of the provisions, may be made by the Tribal Council.

CERTIFICATION

The undersigned, the duly authorized Secretary of the Temecula Band of Luiseño Mission Indians, sometimes referred to as the Pechanga Band of Mission Indians, federally recognized as the Pechanga Band of Luiseño Mission Indians, does hereby certify that the foregoing Business Site Leasing Code (Title 6, Division 1, Articles 1 through 9) was adopted at a duly called General Membership Meeting held on the 29th day of January, 2017, by a vote of general consent with 187 members signed in and such Code has not been rescinded or amended in any way.

Dated: September 20, 2017



Louise Burke
Tribal Secretary