




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

**APPROVAL OF  
MANZANITA BAND OF THE DIEGUENO MISSION  
INDIANS OF THE MANZANITA RESERVATION,  
CALIFORNIA  
LEASING ORDINANCE**

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The attached Leasing Ordinance, submitted by the Manzanita Band of the Diegueno Mission Indians (listed in the Federal Register, Vol. 85, No. 20 FR 5464 (January 6, 2020) as the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 27 pages and adopted by the Manzanita Executive Committee on June 12, 2020, is hereby approved.

Dated: OCT 29 2020

  
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Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

# **MANZANITA BAND OF THE KUMEYAAY NATION LEASING ORDINANCE**

## **1. INTRODUCTION**

### **1.1 Authority and Delegation**

This Ordinance is enacted by the General Council pursuant to the inherent powers of the Manzanita Band of the Kumeyaay Nation, federally recognized as the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California ("Tribe"), as a sovereign, federally recognized Indian tribe, and the powers vested in it under Article VI of the Tribe's Constitution and Bylaws, adopted on July 12, 1976 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976, as amended ("the Constitution"), which include the power and responsibility to administer assets and to manage all economic affairs and enterprises on unassigned lands of the Manzanita Band of Mission Indians. Pursuant to the Constitution, and consistent with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Public Law 112-151 (codified at 25 U.S.C. § 415(h)) (the "HEARTH Act"), the General Council hereby exercises its power and authority to lease any real property of the Tribe or lease space within existing facilities on Tribal Trust Land that is not already leased in accordance with federal law and this Ordinance.

### **1.2 Scope**

The scope of this Ordinance shall be limited to all business, agricultural, residential, public Wind Energy Evaluation Leases ("WEEL") and Wind and Solar Resource ("WSR") Leases of Tribal Trust Land, subject to and entered into after the Effective Date of this Ordinance. This Ordinance does not apply to mineral leases or leases of privately held lands, including trust allotments, nor shall it be construed to limit the Tribe's ability to enter into leases for Tribal Trust Land for which the Tribe has received Secretarial approval under 25 U.S.C. § 415. Nothing herein shall be construed to affect the terms and conditions of existing leases of Tribal Trust Land.

### **1.3 Purpose**

The purposes of this Ordinance are to:

- (a) Recognize the authority of the Tribe to issue, review, approve, and enforce certain Leases and establish streamlined procedures for environmental review pursuant to and in accordance with this Ordinance;
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Manzanita Band of the Kumeyaay Nation; and
- (c) Implement the HEARTH Act.

## 1.4 Short Title

This Ordinance shall be known and cited as the “Manzanita Leasing Ordinance.”

## 2. DEFINITIONS

As used in this Ordinance, the capitalized terms set forth below shall have the following meanings: “Applicable Laws” means all applicable Tribal and federal laws affecting Tribal Trust Land and any Leases issued hereunder, including with particularity this Ordinance.

- 2.1 **“Agricultural Land”** means Tribal Trust Land suited or used for the production of crops, livestock or other agricultural products, or Tribal Trust Land that is suited or used for a business that supports the surrounding agricultural community.
- 2.2 **“Assignment”** means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a Lease.
- 2.3 **“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.
- 2.4 **“BIA”** means the Bureau of Indian Affairs, United States Department of the Interior.
- 2.5 **“Executive Committee”** means the officials of the Tribe duly elected or appointed in accordance with Article III, Section 2 of the Constitution.
- 2.6 **“Development Period”** means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- 2.7 **“Environmental Review Process”** means the process for conducting a Tribal environmental review to assess the Significant Effects on the Environment of a Project if any.
- 2.8 **“Environmental Reviewer”** means an official from the Tribal EPA program or other official designated by the Executive Committee who is charged with overseeing the Environmental Review Process.
- 2.9 **“General Council”** means the governing body of the Tribe as defined in Article III, Section 1 of the Constitution.
- 2.10 **“Gross Receipts”** means the total amounts an organization received from all sources during its annual accounting period, without subtracting any costs or expenses.

- 2.11 “Holdover”** means circumstances in which a Lessee remains in possession of the Premises after the lease term expires or is cancelled or terminated.
- 2.12 “Lease”** means a written agreement or contract between the Lessor and a Lessee made pursuant to this Ordinance, whereby the Lessee is granted a right to possess that portion of Tribal Trust Land specified in the Lease for a specified purpose and duration. The Lessee’s right to possess will limit the Lessor’s right to possess the Premises only to the extent provided in the Lease. A Lease may be for business, commercial and other purposes, including but not limited to retail, office, manufacturing, storage, biomass, waste-to-energy, agricultural, residential, or for religious, educational, recreational, cultural, or other public purposes, including WEELs and WSR Leases, as defined in Sections 2.30 and 2.31. A Lease for residential purposes shall be limited to leases for single-family homes and affordable housing purposes.
- 2.13 “Leasehold Mortgage”** means a written instrument that pledges a Lessee’s leasehold interest in a Lease as security for the repayment of a specified debt or other obligation owed by the Lessee to a lender or other mortgagee.
- 2.14 “Lessee”** means a person or entity who has acquired the legal right to possess, use and occupy a portion of Tribal Trust Land under a Lease.
- 2.15 “Lessor”** means the Tribe.
- 2.16 “LTRO”** means the Land Titles and Records Office of the BIA.
- 2.17 “Permanent Improvements”** means buildings, other structures, wind or solar testing or generation facilities, and associated infrastructure attached to the Premises.
- 2.18 “Premises”** means the specifically identified parcel(s) or tract(s) of Tribal Trust Land that is subject to a particular Lease.
- 2.19 “Project”** means any improvement and use of Tribal Trust Lands under and subject to the terms and conditions of a Lease.
- 2.20 “Public”** means, for purposes of an environmental review pursuant to Chapter 10 of this Ordinance, (a) any member of the Tribe 18 years of age or older, and (b) any person holding an interest in land contiguous to a proposed Lease which may reasonably be expected to experience a Significant Environmental Effect from the intended use of the Lease.
- 2.21 “Resource Development Plan”** means a plan that describes the Permanent Improvements to be installed on Tribal Trust Land subject to a WSR Lease, the location of their installation, design standards to be used, a schedule for the commencement and completion dates of their installation and related construction

activities, and information regarding proper maintenance of the Permanent Improvements.

- 2.22 “Restoration and Reclamation Plan”** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for a leased site, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- 2.23 “Significant Effect on the Environment”** means a substantial adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas, and objects of historic, cultural, or aesthetic significance.
- 2.24 “Space Lease”** means a Lease of space within existing facilities on Tribal Trust Land that is not otherwise subject to a Lease.
- 2.25 “Sublease”** means a written agreement by which a Lessee grants to an individual or entity a right to possession in and to Premises that is no greater than that held by the Lessee under a Lease.
- 2.26 “Surety”** means one who guarantees the performance of another.
- 2.27 “Tribe”** means the Manzanita Band of the Kumeyaay Nation, federally recognized as the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California.
- 2.28 “Tribal Court”** means the court established under Tribal law.
- 2.29 “Tribal EPA”** means the Tribe’s Environmental Protection Agency.
- 2.30 “Tribal Trust Land”** means any tract of lands held in trust by the United States for the benefit of the Tribe.
- 2.31 “WEEL”** means a Wind Energy Evaluation Lease authorizing short term possession of Tribal Trust Land for the purpose of installing, operating, and maintaining instrumentation and associated infrastructure, such as meteorological towers, to evaluate wind resources for electrical generation.
- 2.32 “WSR Lease”** means a Wind and Solar Resource Lease that authorizes possession of Tribal Trust Land for the purpose of installing, operating and maintaining instrumentation, facilities and associated infrastructure, such as wind turbines and solar panels, to harness wind power and solar power to generate and supply electricity for resale:
- (a) on a for-profit or not-for-profit basis;
  - (b) to a utility serving the public generally; or

- (c) to users within the local community on or near Tribal Trust Land.

### **3. GENERAL PROVISIONS AND PROCESS**

#### **3.1 Information**

Information on obtaining Leases shall be available from the Office of the Executive Committee located in Tribal headquarters.

#### **3.2 Terms and Conditions**

Leases shall be governed by the terms and conditions set forth in the Lease authorized by the General Council pursuant to Article VI, Section 1 of the Constitution and approved by the Executive Committee pursuant to this Ordinance. A Lease is not effective until it has been authorized by the General Council and approved by the Executive Committee. The terms and conditions of a Lease may be modified only with the approval of the Executive Committee. The Lessee is responsible for understanding the terms and conditions of the Lease it enters into.

#### **3.3 Duration and Renewal**

3.3.1 No Lease shall be approved more than 12 months prior to the commencement of the term of the Lease.

3.3.2 Except as provided in this Section 3.3.2, the term of any Lease or WSR Lease shall not exceed 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 Lessee shall notify the Tribe in writing of its intent to renew at least one year before such Lease is due to expire. If a Lease is for residential, religious, educational, recreational, cultural, or other public purposes, the term may not exceed 75 years.

3.3.3 The term of a WEEL shall not exceed the period described in Chapter 5 of this Ordinance.

#### **3.4 Applicable Law**

The Lease shall state that it is governed by this Ordinance and applicable Tribal and federal law. The parties to the Lease may further provide for the application of any other body of law, such as the laws of a specified state and the order of application.

#### **3.5 Records**

3.5.1 The Executive Committee shall provide a copy of all Leases, Subleases, Assignments, amendments, Leasehold Mortgages, renewals, cancellations, and

terminations to the LTRO and the Bureau of Indian Affairs Office with responsibility for the Manzanita Reservation.

- 3.5.2 The Executive Committee is responsible for maintaining a copy of all recorded Leases, Subleases, Assignments, amendments, Leasehold Mortgages, renewals, cancellations, and terminations and for disseminating copies of same to the Executive Committee Secretary, the Tribal EPA, and if applicable, the Tribal Housing Department. The Executive Committee shall also cause the Tribe to maintain records of payments, assessments, penalties and other such transactions pursuant to a Lease.

### **3.6 Ownership of Records**

Records of activities taken pursuant to this Ordinance are the property of the Tribe and its subordinate governmental entities. Records compiled, developed, or received by the Executive Committee in the course of business with the Secretary are the property of the Tribe. Copies of any documents required to be provided to LTRO by this Ordinance are the property of the Secretary.

### **3.7 Permits**

This Ordinance does not apply to a permit of Tribal Trust Land. A permit is a non-assignable agreement between the Tribe and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Tribal Trust Land for a specified purpose.

### **3.8 Approval and Issuance**

The Executive Committee has the authority to give final approval of all Leases.

- 3.8.1 Unless otherwise provided herein, the General Council shall submit a Lease that meets the requirements of this Ordinance and that it has authorized to the Executive Committee for final approval. The General Council's submission of a Lease to the Executive Committee constitutes a recommendation that the Executive Committee approve a proposed Lease.
- 3.8.2 Notice of Decision. The Chairperson or other person designated by the Executive Committee shall provide written notice of all final decisions to the prospective Lessee by personal delivery, facsimile transmission, e-mail or United States first class mail to the mailing address as set forth in the Lease documents. Failure to give or receive such notice shall not affect the validity of any determination, recommendation or action.

## **4. LEASE CONDITIONS AND TERMS**

The requirements applicable to applications for Leases and their terms and conditions are set out below. Information about obtaining a Lease will be made available at the Tribe's offices.

## **4.1 Supporting Documents**

All applicants for Leases shall submit the following documents to the Executive Committee:

- 4.1.1 Financial statements, documentation and information sufficient to demonstrate the applicant's financial capacity to carry out the activity contemplated in the proposed Lease and to fulfill the financial and other obligations of the proposed Lease;
- 4.1.2 Site survey and legal description sufficient for purposes of recording with LTRO;
- 4.1.3 Tribal environmental review where required; and
- 4.1.4 Other documents as may be required by the Executive Committee, including any applicable leasing management plans in such form and content as may be specified by the Executive Committee.

## **4.2 Minimum Provisions**

All Leases shall contain, at a minimum, the following provisions:

- 4.2.1 The tract, location, or parcel of the land being leased, in sufficient detail to meet recording requirements for the LTRO;
- 4.2.2 The purpose of the Lease and authorized uses of the Premises;
- 4.2.3 The parties to the Lease and their contact information;
- 4.2.4 The effective date and term of the Lease;
- 4.2.5 Identification of the responsible party for constructing, owning, operating, maintaining and removing any Permanent Improvements on the Premises;
- 4.2.6 Indemnification of the United States and Lessor;
- 4.2.7 Payment requirements, including payee, due date, and amount due; late payments and penalties, including any applicable interest amounts; and acceptable forms of payment;
- 4.2.8 A Lease must specify that the Lessee shall make payments directly to the Tribal Secretary-Treasurer. Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date;
- 4.2.9 Due diligence, insurance and bonding requirements as provided in this Ordinance;



- 4.2.10 The obligations of the Lessee to the Tribe are also enforceable by the United States, so long as the land remains in trust status;
- 4.2.11 The Lessee must comply with all applicable Tribal laws;
- 4.2.12 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 the Tribe to determine how to proceed and appropriate disposition; and
- 4.2.13 The Tribe has the right, at any reasonable time during the term of the Lease, and upon reasonable notice, to enter the Premises for inspection and to ensure compliance.
- 4.2.14 The lessee will hold the United States and the Tribe harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises.

#### **4.3 Tribal Preference**

A Lease may include, consistent with Tribal law, a provision requiring that Lessee apply an Indian preference in hiring and other employment action.

#### **4.4 Appraisal; Local Studies**

- 4.4.1 The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by a qualified professional utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease date of comparable sites or by similar methodology as determined by the Executive Committee in its sole discretion and deemed to be in the Best Interest of the Tribe.
- 4.4.2 Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser using accepted appraisal methodologies, as determined by the Executive Committee in its sole discretion and deemed to be in the Best Interest of the Tribe.
- 4.4.3 An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Lease.

#### **4.5 Fair Annual Lease Value**

- 4.5.1 No Lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, including allowance for any special fees or concessions granted by anyone associated with the transaction, except as follows:

- (a) The Lease is in the Development Period;
- (b) The Executive Committee is providing an incentive for businesses to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, or lease abatements to attract such businesses; or
- (c) The Executive Committee determines such action is in the Best Interest of the Tribe.

4.5.2 A Lease may be structured at a flat lease rate.

4.5.3 A Lease may be structured at a flat lease rate plus a percentage of Gross Receipts.

4.5.4 A Lease may be structured based on a percentage of Gross Receipts or based on a market indicator.

4.5.5 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 Lease or the contribution value of such improvements.

4.5.6 Leases 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.

4.5.7 The Executive Committee 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.

4.5.8 Subject to Section 4.5.9, the Lessee shall obtain, and maintain throughout the term of the Lease, insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the State of California. Such insurance shall:

4.5.8.1 Protect the interests of the Lessor and the United States, and be in amounts sufficient to protect all insurable Permanent Improvements on the Premises;

4.5.8.2 Include, without limitation, property, liability and casualty insurance, including, personal injury or death, business interruption coverage when required by the Executive Committee, and such other insurance as specified in the Lease; and

4.5.8.3 Expressly identify the Lessor and the United States as additional insureds.

- 4.5.9 The Executive Committee may waive the requirement for insurance if such waiver is determined to be in the Best Interest of the Tribe. The Executive Committee shall maintain written records of waivers. The waiver may be revoked at any time if it is later determined to no longer be in the Best Interest of the Tribe.

#### **4.6 Leases of Agricultural Land**

The Premises of a Lease of Agricultural Land shall be managed in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable Tribal laws, leasing policies, the goals and objectives of any agricultural management plan developed by the Tribe and, as applicable, the American Indians Agricultural Resource Management Act.

#### **4.7 Leases Within an Irrigation Project**

If the Premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. Part 171, as the same may be amended, replaced, or superseded, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

### **5. LEASE REQUIREMENTS**

#### **5.1 Space Leases**

Space Leases shall be reviewed and approved pursuant to this Ordinance. A Space Lease shall contain a description of the location and square footage of the space being leased adequate for recording by the LTRO, and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

#### **5.2 Land Descriptions**

Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems in sufficient detail to meet recording requirements for the LTRO.

#### **5.3 Performance Bond**

- 5.3.1 Subject to Section 5.3.2, the Lessee shall obtain a performance bond, satisfactory to the Executive Committee, in an amount sufficient to secure the contractual obligations of the Lease and guarantee the following:

5.3.1.1 The annual lease payment;

5.3.1.2 The estimated development cost of Permanent Improvements to the Premises;

- 5.3.1.3 Any additional amount necessary to ensure compliance with the Lease; and
- 5.3.1.4 Compliance with the Restoration and Reclamation Plan, where applicable.
- 5.3.2 The Executive Committee may waive the bond requirement in whole or part, or reduce the amount of the bond required, if doing so is in the Best Interest of the Tribe. The Executive Committee shall maintain written records of waivers and reductions.
- 5.3.3 The performance bond may be in one of the following forms:
  - 5.3.3.1 Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - 5.3.3.2 Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - 5.3.3.3 Negotiable Treasury securities; or
  - 5.3.3.4 Surety bond issued by a company approved by the U.S. Department of the Treasury.
- 5.3.4 The Executive Committee may accept an alternative form of security that provides adequate protection for the Tribe, including without limitation an escrow agreement.

#### **5.4 Permanent Improvements**

- 5.4.1 Lessee, at Lessee's expense or as otherwise provided in the Lease, may construct Permanent Improvements under a Lease under the following circumstances:
  - 5.4.1.1 All Leases shall specify, or provide for the development of:
    - (a) A plan that describes the type and location of any Permanent Improvements to be built by the Lessee; and
    - (b) A general schedule for construction of the Permanent Improvements.
  - 5.4.1.2 All Leases shall require the Lessee to exercise diligence and use its best efforts to complete construction of any Permanent Improvements within the schedule specified in the Lease.
  - 5.4.1.3 Lessee shall provide the Executive Committee written justification as to the nature of any delay, the anticipated date(s) of construction of the Permanent Improvements, and evidence of progress toward completion of construction.

- 5.4.1.4 When requested by the Executive Committee or otherwise required in the Lease, Lessee shall further provide the Executive Committee, in writing, an updated schedule of construction.
- 5.4.1.5 Failure of Lessee to comply with these requirements will be deemed a violation of the Lease and may lead to termination or cancellation of the Lease pursuant to Chapter 8 of this Ordinance.
- 5.4.1.6 Where applicable, all Leases shall require the Lessee to furnish and comply with a Restoration and Reclamation Plan to be implemented at the expiration or termination of the Lease term.
- 5.4.2 Permanent Improvements on the premises shall become the property of the Tribe unless otherwise provided for in the Lease. If Permanent Improvements will be removed, the Lease shall specify the maximum time allowed for such removal.
- 5.4.3 Permanent Improvements not owned by the Tribe may be subject to taxation by the Tribe.

## **5.5 Subleases, Assignments, Amendments and Leasehold Mortgages**

- 5.5.1 Subleases, Assignments, amendments and Leasehold Mortgages of any Lease shall be by written consent of the Executive Committee and Lessee, unless otherwise authorized by Section 5.5.2.
- 5.5.2 Leases may authorize by their terms Subleases and Assignments, in whole or in part, without approval from the Executive Committee and execution by the Executing Official, provided that a copy of the executed Sublease or Assignment is provided to the Executive Committee within 30 days after execution and the following conditions, where applicable, and any others stated in the Lease are met:
  - 5.5.2.1 There is no event of default under the Lease or violation of this Ordinance;
  - 5.5.2.2 Any restrictions and use limitations respecting the use of the Premises shall continue to apply to any sublessee or assignee;
  - 5.5.2.3 The proposed sublessee or assignee submits a current financial statement showing financial adequacy;
  - 5.5.2.4 The sublessee or assignee agrees in writing to assume all of the obligations and conditions of the Lease; and
  - 5.5.2.5 The Lessee shall not be relieved or released from any of its obligations under the Lease, provided that this requirement may be waived with respect to Subleases and Assignments whenever the Executive Committee determines

such waiver to be in the Best Interest of the Tribe. The Executive Committee shall maintain written records of waivers.

Nothing in this Section 5.5.2 shall relieve the parties from carrying out their respective obligations under the Lease, which may contain additional restrictions and conditions.

5.5.3 Notwithstanding Sections 5.5.1 and 5.5.2, a Lease for residential purposes may be assigned without meeting approval or consent requirements if (1) the Lease is for housing for public purposes, or the assignee is a leasehold mortgagee or its designee, acquiring the Lease either through foreclosure or by conveyance; (2) the assignee agrees in writing to assume all of the obligations and conditions of the Lease; and (3) the assignee agrees in writing that any transfer of the Lease will be in accordance with Tribal and other applicable law.

5.5.4 The Lease may authorize Leasehold Mortgages for the purpose of financing the development and improvement of the Premises, subject to written approval by the Executive Committee and/or other conditions stated in the Lease.

5.5.5 If a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagee is also the purchaser, the leasehold mortgagee may assign the Lease without approval of the Executive Committee or Lessee, provided the assignee demonstrates financial capacity to perform the Lease and agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the leasehold mortgagee, approval by the Executive Committee and execution by the Executing Official is required, except as otherwise provided in the Lease, and further provided that the purchaser must agree in writing to be bound by all the terms and conditions of the Lease.

## **6. WIND AND SOLAR LEASES (WEELS & WSR LEASES) SPECIFIC PROVISIONS**

### **6.1 WEELS and WSR Leases Covered**

6.1.1 This Chapter contains provisions specifically applicable to WEELS and WSR Leases. In the event of conflicts between this Chapter and other portions of this Ordinance concerning WEELS and WSR Leases, this Chapter will control as to any conflicting provision, but WEELS and WSR Leases otherwise remain subject to the remainder of this Ordinance.

6.1.2 If the generation of electricity is solely to support a use of Tribal Trust Land covered by an approved Lease, and not a WEEL or WSR Lease, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure is governed by Chapter 5, as appropriate.

## **6.2 Evaluation and Development Activities for which a WEEL or WSR Lease is Required**

- 6.2.1 Anyone other than the Tribe or its instrumentalities and enterprises seeking to possess Tribal Trust Land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if the use of Tribal Trust Land is authorized (1) by another form of Lease in accordance with Section 6.1.2 or (2) a permit.
- 6.2.2 Except as provided in Section 6.1.2, anyone other than the Tribe or its instrumentalities and enterprises seeking to possess Tribal Trust Land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR Lease.

## **6.3 Purpose of a WEEL**

A WEEL is a short-term Lease for the purpose of evaluating wind resources. The Lessee may use information collected under the WEEL to assess the potential for wind energy technology to use in developing the energy resource potential of the Premises.

## **6.4 Term of a WEEL**

- 6.4.1 A WEEL must provide for a definite term, state if there is any option to renew and, if so, provide for a definite period for the renewal term. WEELs are for limited purposes of wind resource evaluation and therefore may have:
  - 6.4.1.1 an initial term no longer than 3 years; and
  - 6.4.1.2 a renewal term not to exceed 3 years.
- 6.4.2 The exercise of the option to renew must be in writing, and the WEEL must specify:
  - 6.4.2.1 the time and manner by which the option must be exercised, or if it is automatically effective;
  - 6.4.2.2 whether further consent or approval is required; and
  - 6.4.2.3 the additional consideration, if any, due upon exercise of the option to renew or start of the renewal term.

Unless the renewal is automatic, the Executive Committee shall provide copies of the renewal documentation to the LTRO.

## **6.5 Permanent Improvements**

- 6.5.1 A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of wind resource development that are considered Permanent Improvements.
- 6.5.2 The proposed Lessee of a WEEL will, before completion of the negotiation of the WEEL and submission for Executive Committee review and approval, provide to the Executive Committee:
  - 6.5.2.1 a construction and equipment installation plan that describes the type and location of any Permanent Improvements the proposed Lessee plans to install on the Premises and a schedule showing the tentative commencement and completion dates for construction of these Permanent Improvements;
  - 6.5.2.2 a Restoration and Reclamation Plan; and
  - 6.5.2.3 documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the proposed evaluation phase and the proposed Lessee's ability to successfully design, construct, or obtain the funding for a Project similar to the proposed Project's development phase, if pursued and approved.
- 6.5.3 If any of the following changes are made to the equipment installation plan, the Executive Committee must approve the revised plan and provide a copy to the BIA:
  - 6.5.3.1 location of Permanent Improvements;
  - 6.5.3.2 type of Permanent Improvements; or
  - 6.5.3.3 delay of 90 days or more in any segment of the evaluation phase.

## **6.6 Ownership and Disposition of Permanent Improvements**

- 6.6.1 A WEEL must specify who will own any Permanent Improvements the Lessee installs during the Lease term. In addition, the WEEL must provide whether any Permanent Improvements that the Lessee installs:
  - 6.6.1.1 will remain on the Premises upon expiration, termination, or cancellation of the WEEL (whether or not the WEEL is followed by a WSR Lease), in a condition satisfactory to the Tribe;
  - 6.6.1.2 may be conveyed to the Tribe during the WEEL term and under what conditions the Permanent Improvements may be conveyed;



6.6.1.3 will be removed within a time period specified in a WEEL, at the Lessee's expense, with the Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or

6.6.1.4 will be disposed of by other specified means.

6.6.2 A WEEL that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession and title to the Permanent Improvements, if they are not removed within the specified time period, and without limitation to the Tribe's ability to recover against any bond and/or Lessee.

## **6.7 Due Diligence Regarding Installation of Permanent Improvements**

6.7.1 A WEEL must include due diligence provisions that require the Lessee to:

6.7.1.1 install testing and monitoring facilities within 12 months after the effective date of the WEEL (or another period designated in the WEEL), and consistent with the plan of development; and

6.7.1.2 if installation does not occur, or is not expected within the time period allowed by Section 6.7.1.1 or the WEEL, provide the Executive Committee with an explanation of good cause for any delay, the estimated completion date for installation of the facilities, and evidence of progress concerning installation.

6.7.2 Failure of the Lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:

6.7.2.1 cancellation of the WEEL under Chapter 8; and

6.7.2.2 application of the transfer of ownership requirement for energy resource information collected under the WEEL to the Tribe pursuant to Section 6.8.

## **6.8 Ownership of Energy Resource Information**

6.8.1 The WEEL must specify the ownership of any energy resource information the Lessee obtains during the WEEL term.

6.8.2 Unless otherwise specified in the WEEL, the energy resource information that the Lessee obtains during the term of the WEEL becomes the property of the Tribe at the expiration, termination, or cancellation of the WEEL or upon failure by the Lessee to diligently install testing and monitoring equipment on the Premises in accordance with Section 6.7.

## **6.9 Incorporation of WEEL Analyses Into WSR Analyses**

Any analyses a Lessee uses to bring a proposed WEEL into compliance with applicable laws, ordinances, rules, and regulations, including those under Section 3.4 and any other legal requirements, may be incorporated by reference, as appropriate into a proposed WSR Lease.

## **6.10 WSR Lease Option**

A WEEL may provide for an option period following expiration of the WEEL term during which the Lessee and Tribe may enter into a WSR Lease. Unless the WSR Lease or the principal terms thereof are agreed and approved by the Executive Committee at the time of WEEL approval, the WSR Lease requires the separate approval of the Executive Committee.

## **6.11 No Valuation or Bond Required**

Unless the terms of a WEEL approved by the Executive Committee provide otherwise, the Lessee is not required to provide a rental valuation of the Premises or a performance bond for a WEEL.

## **6.12 Purpose of WSR Lease**

A WSR Lease authorizes a Lessee to possess the Premises to conduct activity related to the installation, operation and maintenance of wind and/or solar energy generation projects, including facilities and infrastructure associated with the generation, transmission and storage of electricity and other associated activities.

## **6.13 WEEL Not Required Prior to WSR**

Obtaining a WEEL is not required as a precondition to a WSR Lease, and with approval of the Executive Committee, a Lessee may directly enter into a WSR Lease without having had a WEEL.

## **6.14 Responsibilities of Lessee of WSR Lease**

Unless a WSR Lease expressly provides otherwise, the Lessee shall be responsible for evaluating the Premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and arranging for electricity transmission.

## **6.15 Information and Documentation Required from Prospective Lessee of a WSR Lease**

- 6.15.1 Prior to submission of a WSR Lease to the Executive Committee for approval, the proposed Lessee shall submit to the Executive Committee documents that demonstrate the technical capability of the proposed Lessee or its agent to construct, operate, maintain, and terminate the proposed WSR Lease, and the

proposed Lessee's ability to successfully design, construct, and obtain funding for the proposed WSR Lease.

6.15.2 The proposed Lessee shall also provide to the Executive Committee for incorporation in the WSR Lease, by reference or otherwise:

6.15.2.1 a Resource Development Plan for the construction of Permanent Improvements on the Premises; and

6.15.2.2 a Restoration and Reclamation Plan for the Premises upon expiration, termination or cancellation of the WSR Lease.

#### **6.16 Permanent Improvements Installed Under a WSR Lease**

A WSR Lease shall provide for the installation of facilities and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity as determined during any analysis and development activities in support of the WSR Lease and in accordance with the Resource Development Plan incorporated in the WSR Lease pursuant to Section 6.15.2.1. All such facilities and infrastructure shall be considered Permanent Improvements.

#### **6.17 Ownership of Permanent Improvements Installed under a WSR Lease**

6.17.1 A WSR must specify who will own any Permanent Improvements that the Lessee installs during the WSR Lease term, and may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Tribe during such WSR Lease term. In addition, the WSR Lease must provide whether each such specific Permanent Improvement will:

6.17.1.1 remain on the Premises upon expiration, termination, or cancellation of the WSR Lease in a condition satisfactory to the Tribe and become the property of the Tribe;

6.17.1.2 be removed within a time period specified in a WSR Lease, at the Lessee's expense, with the Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or

6.17.1.3 be disposed of by other specified means.

6.17.2 A WSR Lease that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession and title to the Permanent Improvements if not timely removed, and to charge the cost of removal and restoration to any performance bond held by the Tribe and/or recover such cost from Lessee.

#### **6.18 Due Diligence of WSR Lease Lessee Concerning Permanent Improvements**

6.18.1 A WSR Lease shall include due diligence requirements that require the Lessee to:

- 6.18.1.1 commence installation of energy facilities within two years after the effective date of the WSR Lease (or consistent with a timeframe stated in the applicable Resource Development Plan incorporated in the WSR Lease);
  - 6.18.1.2 if installation does not occur, or is not expected to be completed within the timeframe specified in the WSR Lease, provide the Executive Committee with an explanation of good cause as to the nature of any delay, the anticipated date of installation of the facilities, and evidence of progress toward completion of installation;
  - 6.18.1.3 maintain all on-site electrical generation equipment, facilities and related infrastructure in accordance with the design standards in the Resource Development Plan and best industry practice; and
  - 6.18.1.4 repair, place into service, or remove from the Premises, within a time period specified in the WSR Lease, any idle, improperly functioning, or abandoned equipment or facilities that have been out of use for a continuous period specified in the WSR Lease (unless due to planned suspension of operations, for example, for grid operations or during bird migration season).
- 6.18.2 Failure of the Lessee to comply with the due diligence requirements of the WSR Lease is a violation thereof and may lead to the termination or cancellation of the WSR Lease under Chapter 8.

## **6.19 Compensation Reviews and Adjustments**

The compensation to the Tribe under a WSR Lease may be reviewed and adjusted at such times and on such terms as may be specified in the WSR Lease. The Tribe may choose to waive periodic review of the adequacy of compensation if the Executive Committee is satisfied with the compensation specified and determines that the waiver of periodic review is in the Best Interest of the Tribe.

## **6.20 Performance Bond**

- 6.20.1 Unless waived by the Executive Committee or the terms of an approved WSR Lease, the Lessee of a WSR Lease must provide a performance bond. Unless otherwise agreed by the Executive Committee, the performance bond must be in an amount sufficient to secure Lessee's obligations under the WSR Lease, including:
- 6.20.1.1 the amount of the expected maximum annual rental payment and other compensation to the Tribe;

- 6.20.1.2 the cost of installing any required Permanent Improvements; and
- 6.20.1.3 the cost of removing any Permanent Improvements, which the WSR Lease requires to be removed, and to restore and reclaim the Premises, as and if required by the WSR Lease.
- 6.20.2 The WSR Lease must specify the conditions upon which any adjustment in the amount of the bond may be made to reflect changing conditions.
- 6.20.3 The Lessee shall cause its Surety to provide any supporting documentation needed to show the bond is enforceable and the Surety is bound to perform under it.
- 6.20.4 The performance bond shall require the Surety to provide notice to the Lessee and the Tribe at least 60 days before any cancellation of the bond in order for the Lessee to provide an acceptable substitute performance bond. Lessee's failure to timely provide a satisfactory performance bond is a violation of the WSR Lease.

#### **6.21 Sublease, Assignment and Leasehold Mortgage**

Any Sublease, Assignment or Leasehold Mortgage of a WSR Lease shall be subject to Section 5.5 of this Ordinance.

### **7. ADMINISTRATION**

#### **7.1 Generally**

- 7.1.1 Except where required otherwise by agreement or applicable law, the Executive Committee shall manage all Leases pursuant to this Ordinance.
- 7.1.2 The Executive Committee may incorporate in the terms and conditions of a Lease a leasing management plan or other lease policies that employ real estate management practices and addresses accounting, collections, monitoring, enforcement, relief and remedies.

#### **7.2 Accounting**

- 7.2.1 The Tribal Secretary-Treasurer shall implement an accounting system that generates invoices in advance of the due dates, maintains accounts for payments, and establishes dates for when rate adjustments should be made.
- 7.2.2 The accounting system shall include the following information: name of Lessee, Lease number and type, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.

7.2.3 The Executive Committee shall provide an annual accounting to the General Council.

### **7.3 Administrative Fees**

The Executive Committee may charge fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, Leasehold Mortgage or other administrative transactions. A schedule of fees shall be made available to prospective Lessees.

## **8. ENFORCEMENT**

### **8.1 Generally**

The Executive Committee shall have all powers necessary and proper to enforce on behalf of the Tribe the lease terms, applicable laws, ordinances, regulations, rules, policies, including any applicable leasing management plans or other lease policy incorporated in a Lease, including the power to enter the Premises at any time in the case of emergency and in the absence of an emergency at a reasonable time after reasonable notice for the purpose of inspecting the condition of the Premises and for verifying compliance by the Lessee with the Lease, and to assess penalties and late payments.

### **8.2 Defaults**

8.2.1 If the Executive Committee determines the Lessee is in default, the Chairman shall send the Lessee a notice of default within five business days of such determination. The notice of default shall be provided by certified mail, return receipt requested.

8.2.2 Within 30 days after the mailing of a notice of default, the Lessee shall:

8.2.2.1 Cure the default and notify the Executive Committee in writing that the default has been cured;

8.2.2.2 Dispute the Executive Committee's determination that the Lease is in default and explain why the Lease should not be canceled; or

8.2.2.3 Request additional time to cure the default.

### **8.3 Remedies**

8.3.1 If the Lessee fails to cure a default within the prescribed period, subject to the terms of the Lease, the Executive Committee may:

8.3.1.1 Cancel the Lease pursuant to this Ordinance;

- 8.3.1.2 Grant an extension of time to cure the default;
- 8.3.1.3 Pursue other remedies, including execution on bonds or collection of insurance proceeds;
- 8.3.1.4 Any combination of remedies listed above; or
- 8.3.1.5 Any other remedy set forth in the Lease and/or an applicable leasing management plan or lease policy incorporated in a Lease.
- 8.3.1.6 Notify the BIA, and request that it enforce the Lease provisions or cancel the Lease, pursuant to applicable law.
- 8.3.2 If the Executive Committee cancels a Lease, the Executive Committee shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
  - 8.3.2.1 Explain the grounds for cancellation;
  - 8.3.2.2 Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
  - 8.3.2.3 Notify the Lessee of its right to appeal; and
  - 8.3.2.4 Order the Lessee to vacate the premises within 30 days after receipt of the cancellation letter, if an appeal is not filed by that time.
- 8.3.3 A cancellation shall become effective 31 days after receipt of a cancellation letter. The filing of an appeal shall not change the effective date of the cancellation unless the Tribal Court issues a stay of enforcement pursuant to Section 9.2.
- 8.3.4 If the Executive Committee 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.

#### **8.4 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 Executive Committee may take appropriate emergency action, including securing judicial relief.

## **8.5 Holdover**

If a Lessee remains in possession of the Premises after the expiration or cancellation of a Lease, the Executive Committee shall treat such occupation as a trespass. The Executive Committee shall take action to recover possession and pursue additional remedies. Filing of any action shall be made pursuant to Tribal law, or alternatively the Tribe may make a written request to BIA for resolution under federal law.

## **8.6 Trespass**

If a person occupies the Premises without the Executive Committee's approval, the Executive Committee may pursue appropriate remedies, including the filing of a trespass action under Tribal law to regain possession.

# **9. APPEALS**

## **9.1 Appeals**

Unless an alternative appeals process is provided in the Lease, within 30 days after an adverse determination is made by the Executive Committee, the Lessee or interested party may appeal such determination. An appeal may be brought by filing the following information with the Tribal Court: 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.

## **9.2 Appeal Bond**

If a stay of enforcement is sought, an appeal bond must be posted in an amount sufficient to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bond requirements shall not be separately appealed, but may be contested during the appeal.

## **9.3 Scope of Review**

The Tribal Court shall review whether the determination was contrary to the provisions of this Ordinance or not supported by substantial evidence in the record. The decision of the Tribal Court shall be final.

# **10. ENVIRONMENTAL REVIEW PROCESS**

## **10.1 Generally**

Unless exempt under this Ordinance, the Executive Committee shall not approve a Lease until the proposed Lease has completed the Environmental Review Process pursuant to this Chapter and applicable Tribal regulations. Executive Committee approval of a Lease without compliance with this Chapter shall be null and void.



## **10.2 Threshold Determination**

- 10.2.1 Lease Not Subject to Environmental Review Process. If the Environmental Reviewer determines that the Project authorized by a proposed Lease does not have a Significant Effect on the Environment, the Lease is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.
- 10.2.2 Lease Subject to Environmental Review Process. If the Environmental Reviewer determines that the Project authorized by the Lease might be expected to have a Significant Effect on the Environment, the Lessee and Executive Committee must fulfill, or cause to be fulfilled, 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.

## **10.3 Action on Leasing Decision Subject to Completion of Environmental Review Process.**

If the Environmental Reviewer determines that the Lease is subject to the Environmental Review Process, the Executive Committee may not consider the Lease until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

## **10.4 Environmental Review Process**

- 10.4.1 Unless an exemption applies under this Ordinance, then, before the approval of any Lease, the Executive Committee shall cause to be prepared a comprehensive and adequate Tribal environmental impact report ("TEIR") analyzing the potentially Significant Effect(s) on the Environment of the proposed action; provided that information or data that 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 that the Lease is likely to have, and shall include a detailed statement setting forth all of the following:
- (a) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the commencement of the TEIR;
  - (b) All Significant Effects on the Environment of the proposed Lease; and
  - (c) 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; and
3. Any mitigation measures proposed, recommended, or required under applicable Tribal regulations or other applicable federal law.

10.4.2 In addition to the information required pursuant to Section 10.4.1, the TEIR shall 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.

10.4.3 To the extent relevant, the TEIR may rely on data or analysis in an environmental review previously prepared under the National Environmental Policy Act.

## **10.5 Notice of Completion of Draft TEIR**

10.5.1 Within 30 days following the completion of the draft TEIR, the Executive Committee shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Executive Committee shall also post the Notice of Completion and a copy of the draft TEIR on the Tribe's website. The Notice of Completion shall include all of the following information:

- (a) A brief description of the Project;
- (b) The proposed location of the Project;
- (c) An address where copies of the draft TEIR are available; and
- (d) Notice of a period of 30 days during which the Executive Committee will receive comments on the draft TEIR.

10.5.2 To satisfy the requirement for public notice and opportunity to comment under the HEARTH Act, the Executive Committee will provide public notice by at least one of the procedures specified below in addition to posting on the Tribe's website:

- 10.5.2.1 Publication of the Notice of Completion in a newspaper of general circulation in the area affected by the proposed Lease, with notice to the Public of the opportunity to comment on any Significant Effects on the Environment arising as a result of the proposed Project, and proposed or recommended mitigation measures addressing any such impacts; or

- 10.5.2.2 Posting of the Tribe's draft TEIR in the publicly accessible offices of the Tribe with notice to the Public of the opportunity to comment on any Significant Effects on the Environment of the proposed action.

## **10.6 Response to Public Comments; Conclusion of Environmental Review Process**

- 10.6.1 After the 30-day comment period has ended, the Executive Committee will review all comments received from the Public. Prior to the approval of the Lease, the Executive Committee will provide responses to relevant and substantive public comments on any Significant Effects on the Environment arising as a result of the proposed Project and proposed or recommended mitigation measures addressing any such impacts. Notice of the availability of all responses will be posted in the offices of the Tribe.
- 10.6.2 Upon review of the Significant Effects on the Environment by the Executive Committee, publication of the draft TEIR and acceptance of public comments, the Environmental Review Process concludes and the Executive Committee may approve or disapprove of the proposed Lease, subject to the appeal process provided in this Ordinance.

## **11. MISCELLANEOUS PROVISIONS**

### **11.1 Severability**

The provisions of this Ordinance are severable. Should any section or provision of this Ordinance be declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such determination shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the specific part declared to be unconstitutional or invalid.

### **11.2 Effective Date**

- 11.2.1 Effective upon Enactment by General Council and Secretary of the Interior Approval. This Ordinance shall be effective upon enactment by the General Council and approval by the Secretary of the Interior.
- 11.2.2 Amendments. This Ordinance 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 Ordinance must be submitted to and approved by the Secretary of the Interior.

### **11.3 United States Non-Liability**

The United States shall not be liable for losses sustained by any party to a Lease executed pursuant to this Ordinance.

#### **11.4 Sovereign Immunity Preserved**

Nothing in this Ordinance shall be deemed as a waiver of the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees authorizing suit against any of them in any court, nor shall it be deemed as authorizing a suit for damages against the Tribe or any of its enterprises, authorities, officers, agents, or employees in any action arising under this Ordinance, unless the Tribe by specific, express, and unequivocal action should authorize such action.

#### **CERTIFICATION**

The undersigned, Chairman and Secretary of the Manzanita Band of Kumeyaay Indians, do hereby certify that the foregoing amended Ordinance was adopted by the Executive Committee pursuant to its authority under Article VI, Section 3 of the Tribe's Constitution and General Council Resolution No. 17.08 on November 17, 2017 at a duly called meeting at which a quorum was present by a vote of \_\_\_\_ "for" and \_\_\_\_ "opposed" and \_\_\_\_ "abstaining" on \_\_\_\_\_, 2020, and has not been rescinded or amended in any way.

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Angela Santos, Tribal Chairwoman

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Janice Barnes, Secretary/Treasurer