



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


APPROVAL OF

PUEBLO OF LAGUNA, NEW MEXICO

PUEBLO OF LAGUNA RESIDENTIAL LEASING CODE

The attached Pueblo of Laguna Residential Leasing Code, submitted by the Pueblo of Laguna (listed in the Federal Register, 85 FR 20 5465 (January 30, 2020) as the Pueblo of Laguna, New Mexico), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 32 pages and adopted by the Pueblo of Laguna Council on March 16, 2018, as revised, is hereby approved.

Dated: APR 13 2020


Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



PUEBLO OF LAGUNA RESIDENTIAL LEASING CODE

March 16, 2018,
as modified May 15, 2019

Pueblo of Laguna Government Affairs Office

Abstract

Establishes Pueblo law governing the lease of Pueblo land for residential purposes that satisfy lender requirements for financing of private residential improvements to Pueblo Land, in accordance with the "Helping Expedite and Advance Responsible Tribal Homeownership Act" of 2012 (HEARTH Act), 25 U.S.C. § 415(h), and identifies the means to convert a Pueblo Land Assignment to a Lease, convert a Lease to a Pueblo Land Assignment, or reinstate a Lease as a Pueblo Land Assignment.

TITLE VIII - HOUSING: LANDLORD TENANT

CHAPTER 2. - RESIDENTIAL LEASING CODE

Part 1-General Provisions

Section 8-2-1. - Short title.

This chapter may be referred to as the "Residential Leasing Code."

Section 8-2-2. – Findings.

The Pueblo Council finds that:

- A. Pueblo Land is available for leasing for residential purposes allowed by federal law;
- B. Lenders generally will not accept a Pueblo Land Assignment as collateral for financing improvements to Pueblo Land, and prefer to accept a Lease as collateral;
- C. Congress amended the Indian Long-Term Leasing Act, to allow federally-recognized Indian tribes to assume the responsibility for reviewing and approving leases of tribal lands;
- D. There is a need for a streamlined leasing and review process that accords with Pueblo Law, responds to the housing demands of the Pueblo members, and promotes the Pueblo's development objectives; and
- E. It is in the best interest of the Pueblo to undertake the responsibility for reviewing and approving residential leases of Pueblo Land.

Section 8-2-3. – Authority.

- A. Pueblo Council enacts this chapter as new law to be codified in Section 8-2-1 sequentially through section 8-2-47, governing the leasing of Pueblo Land for residential purposes pursuant to and in accordance with Article IV, Sections 2(b), 2(e), and 2(g), and Article IX, Sections 7, 8, and 9 of the Pueblo of Laguna Constitution (2012).

- B. Pueblo Council enacts this chapter governing the leasing of Pueblo Land for residential purposes, pursuant to and in accordance with 25 U.S.C. § 415(h), upon approval of the Secretary of the Interior.

Section 8-2-4. – Purpose.

- A. The purpose of this chapter is to:
 - (1) simplify and expedite the residential leasing process for Pueblo Land;
 - (2) provide for consistent residential leasing rules; and
 - (3) promote the development and/or revitalization of habitable dwellings on the Pueblo.
- B. This chapter shall be liberally interpreted to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), amending 25 U.S.C. § 415, to permit establishment of the Pueblo’s process to lease Pueblo Land for the financing, placement, construction, or renovation of Single-family Residences or related improvements without the necessity of approval by the Secretary.

Section 8-2-5. Definitions.

For the purpose of this chapter, the following capitalized terms shall be defined as:

- A. “Applicant” means a person requesting to obtain a Lease of Pueblo Land, to convert his or her Pueblo Land Assignment to a Lease, or to have a leased parcel reinstated as or converted to a Pueblo Land Assignment upon expiration of a Lease, and who has filed an Application with the Department.
- B. “Application” means a written request to the Department to convert a Pueblo Land Assignment to a Lease, or request to a relevant Village Official to have a leased parcel reinstated as or converted to a Pueblo Land Assignment.
- C. “Department” means the Pueblo of Laguna Environmental and Natural Resources Department, or successor.

- D. "Environment" means the Pueblo land, air quality, water, minerals, flora, fauna, ambient sound levels, areas of critical habitat, and objects or areas of historic, religious, or cultural significance to the Pueblo.
- E. "HUD" means the U.S. Department of Housing and Urban Development, or any successor.
- F. "Indemnify" means to restore the victim of a loss, in whole or in part, by payment, repair, or replacement.
- G. "Individually-Owned Land" means any tract or interest therein for which the surface estate is owned by a person other than the Pueblo.
- H. "LHDME" means the Laguna Housing Development and Management Enterprise, a designated housing entity created by the Pueblo, and includes any predecessor (e.g., "Pueblo of Laguna Housing Authority"), or successor.
- I. "Lease" means the entire written agreement between the Pueblo and a Lessee whereby the Lessee is granted a right to possess and use only the surface of Pueblo Land for a residential purpose and specified duration, and includes any amendments, exhibits, attachments, or LURA.
- J. "Lease Assignment" means an agreement between a Lessee and another person (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.
- K. "Leasehold Mortgage" means a mortgage, deed of trust, collateral assignment, or other instrument that pledges a Lessee's or sublessee's leasehold interest as security for a debt or other obligation owed by the Lessee or sublessee to a lender, Mortgagee, or government guaranteeing agency.
- L. "Lessee" means a person who has acquired a right to possess and use Pueblo Land by a Lease pursuant to this chapter.
- M. "Lessor" means the Pueblo as the grantor of rights to possess and use Pueblo Land under a Lease.

- N. “LTRO” means the Land Titles and Records Office of the Bureau of Indian Affairs, or successor.
- O. “LURA” means a Land Use Restriction Agreement whereby a Lessee agrees to restrict or condition the residential occupancy or use of the leased premises for a specified term as consideration for the financing or construction of a Single-family Residence.
- P. "Mineral Resources" means oil, gas, uranium, coal, geothermal, or other energy or non-energy minerals on Indian lands regulated by federal law, including sand and gravel.
- Q. “Mixed-use Development” means a real estate development with planned integration of some combination of residential use with retail, office, hotel, commercial recreation or other functions.
- R. “Mortgagee” means the lender under any Leasehold Mortgage, including any successor thereof.
- S. “Permanent Improvement” means a building, other structure, and associated infrastructure attached to the leased premises.
- T. "Public" means any person who resides within the Pueblo and may be directly affected by any Significant Effect on the Environment by a proposed Lease.
- U. "Pueblo" means the Pueblo of Laguna, a federally recognized Indian tribe.
- V. "Pueblo Council" means the governing body of the Pueblo of Laguna, pursuant to Articles III and IV of the Pueblo of Laguna Constitution (2012).
- W. “Pueblo Land Assignment” means a tract of land within the jurisdiction of a village of the Pueblo, or other area, that has been assigned to, and for the residential or farming use of, a Pueblo member under Pueblo Law.
- X. "Pueblo Land" means any land within the Laguna Reservation, *except* Individually-Owned Land, in which the Pueblo owns the surface estate that is in either Trust or Restricted Status.
- Y. "Pueblo Law" means the body of law of the Pueblo, consisting of its Constitution, codes, ordinances, regulations, and customs.

- Z. “Pueblo Secretary” means the Office of the Secretary for the Pueblo of Laguna.
- AA. “Secretary” means the Secretary of the Interior or his designee, including the Bureau of Indian Affairs, or successor.
- BB. “Significant Effects” means a substantial and demonstrable change or impact on the Environment.
- CC. “Single-family Residence” means a habitable building with one to four dwelling units on a tract of land under a single Lease.
- DD. “Single-family Residential Development” means two or more Single-family Residences owned, managed, or developed by a single entity.
- EE. “State Agency” means any agency of the state of New Mexico responsible for reviewing environmental impacts of projects within the state.
- FF. “Sublease” means the entire written agreement by which the Lessee grants to an individual or entity a right to possession or use of some or all of the leased premises, but having no greater rights than that held by the Lessee, under the Lease.
- GG. “Trespass” means any unauthorized occupancy, use of, or action on Pueblo Land.
- HH. “Trust or Restricted Status” means that (1) the United States holds legal title to land or an interest in trust for the benefit of a person or the Pueblo who holds equitable title; or (2) the person or Pueblo holds legal title to land or an interest in land, but cannot alienate or encumber the land without the approval of the United States because of limitations in the conveyance instrument or limitations imposed by federal law.
- II. “Use Rights” means the rights related to possession and use of Pueblo Land conveyed by a Pueblo Land Assignment under Article IX of the Constitution (2012) or other Pueblo Law.
- JJ. “Village” means one (1) of the six (6) villages located on the Laguna Reservation.
- KK. “Village Official” means a Mayordomo and/or Staff Officer of a Village, including a designee of either, where land subject to this chapter is located.

Section 8-2-6. Scope.

- A. **Application.** This chapter shall apply to any Lease of Pueblo Land for residential purposes as authorized by 25 U.S.C. §415(h) and any implementing regulations, including the development of low-income housing by LHDME, and Pueblo Land leased for residential purposes to any person under federal law prior to enactment of this chapter. This chapter does not affect the validity, legality, or term of any Lease or related document approved by the Secretary prior to the effective date of this chapter.
- B. **Exceptions.** This chapter shall not apply to a lease of Pueblo Land for severance of Mineral Resources or to business, agriculture, religious, educational, recreational, cultural, industrial, wind energy evaluation, wind or solar resource, or Mixed-use Development activities or to any residential lease of Individually-Owned Land, or to a lease of water rights or granting of an easement.

Section 8-2-7. Applicable Law.

- A. **Leases.** Every Lease covered under this chapter shall be subject to and governed by Pueblo Law and applicable federal law, unless the Lease contains a provision stating that the Lease is subject to or governed by other law. State law shall not apply to any Lease unless expressly required by federal statute or expressly authorized by Pueblo Council.
- B. **Pueblo Land.** Pueblo Law applies to Pueblo Land, except to the extent that Pueblo Law is inconsistent with applicable federal law.
- C. **Lessees.** All parties to a Lease, including non-members, approved under the authority of the Pueblo Council pursuant to or covered under this chapter, shall be deemed to have consented to the regulatory and adjudicatory jurisdiction of the Pueblo.

Section 8-2-8. Pueblo Land Assignment Conversion to Lease.

- A. The assignee, or successor in interest, of a Pueblo Land Assignment may apply to the Department to convert said assignment to a Lease in accordance with this chapter.
- B. Upon Pueblo Council approval of a Lease covering any Pueblo Land Assignment (or part thereof), whether approved under this chapter or approved prior to enactment of this chapter, the occupancy and Use Rights under Pueblo Law for the Pueblo Land

Assignment (or portion thereof covered by a Lease) shall be extinguished, and the Lessee, including any successor in interest, shall hold an occupancy right only under terms of the Lease as governed by this chapter for the duration of the Lease.

Section 8-2-9. Lease Reinstatement as Pueblo Land Assignment.

- A. The Lessee, or successor in interest, of a Lease of Pueblo Land that was a Pueblo Land Assignment prior to conversion to a Lease, shall be entitled, upon Application to the Department, to have the leased parcel reinstated as a Pueblo Land Assignment upon expiration of that Lease, or upon termination of that Lease in accordance with the terms of the Lease and not due to default upon the part of Lessee, provided said Lessee or successor in interest is then eligible for a Pueblo Land Assignment under applicable Pueblo Law.
- B. Upon approval by a Village Official of an Application for reinstatement of an expired or properly terminated Lease as a Pueblo Land Assignment, and recordation of such approval with the Pueblo Secretary, the Lessee or successor in interest acquires the Use Rights for the formerly leased parcel as a Pueblo Land Assignment under Pueblo Law.

Section 8-2-10. Conversion of Leased Parcel to Pueblo Land Assignment.

- A. Any parcel of Pueblo Land under Lease that was not a Pueblo Land Assignment prior to the Lease, including a parcel of any master housing development lease quit-claimed or conveyed to an occupant (or successor in interest) by LHDME, may be converted to a Pueblo Land Assignment in accordance with Subsection B.
- B. Prior to or upon expiration or termination of any Lease under Subsection A, the Lessee or successor in interest who meets eligibility requirements for a Pueblo Land Assignment under Pueblo Law shall be entitled to have the leased parcel converted to a Pueblo Land Assignment upon Application to the Department.
- C. Upon approval by a Village Official of conversion of a leased parcel to a Pueblo Land Assignment, and recordation of such approval with the Pueblo Secretary, the Lessee or

successor in interest acquires the Use Rights for the leased parcel as a Pueblo Land Assignment under Pueblo Law.

Part 2 - Leasing Approval Process and Requirements.

Section 8-2-11. Obtaining a Residential Lease.

- A. The prospective Lessee may request a Lease for residential purposes by submitting an Application to the Department. The Application must, at a minimum, identify:
 - (1) the Legal Name, address, and phone number of the Applicant(s);
 - (2) the purpose and location of the Pueblo Land proposed for the Lease;
 - (3) the proposed duration for the Lease;
 - (4) the planned access to the Pueblo Land proposed for the Lease;
 - (5) the anticipated use of the Pueblo Land proposed for the Lease; and
 - (6) any planned or current use of existing or proposed Permanent Improvement on the Pueblo Land proposed for the Lease.
- B. **Access Permit.** Upon Application of any prospective Lessee, the Pueblo Secretary shall issue an Access Permit to allow the prospective Lessee's lender or contractors access to the Pueblo Land proposed for the Lease to conduct due diligence or prepare the documentation required by Subsection C.
- C. **Preliminary Review by Department.** The Department may request the prospective Lessee to provide the following documentation related to the Pueblo Land proposed for Lease:
 - (1) an appraisal;
 - (2) a land survey;
 - (3) the type and location (site plan) of any existing and proposed Permanent Improvements;

- (4) a development plan and construction schedule for proposed Permanent Improvements;
- (5) an environmental review, including a cultural and archeological survey; and
- (6) permission of a Village Official to reside within a Village, if applicable.

D. Additional Information. Where an Applicant seeks to convert a Pueblo Land Assignment to a Lease, the prospective Lessee shall provide to the Department:

- (1) proof of a Pueblo Land Assignment with proper Use Rights issued by a Village Official that relates to the Pueblo Land proposed for the Lease;
- (2) a development plan and construction schedule for any proposed Permanent Improvements; and
- (3) proof of Village Official approval of the development plan, if required for the Lease.

E. Environmental Review Process. Upon receipt of a completed Application, the required or requested documentation, and a completed preliminary review by the Department, the Department shall undertake the environmental review process in accordance with Part 4.

F. Lease Negotiation and Provisions.

- (1) Upon preliminary review of a completed Application, including requested or required documentation, the Department may negotiate any of the terms and conditions of a proposed Lease to be approved by the Pueblo Council, which may occur during or upon completion of environmental review.

- (2) A Lease shall be in writing and must identify the following provisions:

- (a) a legally sufficient description of the parcel, the purpose of the Lease, and the authorized uses of the Pueblo Land proposed for the Lease;
- (b) the names of the parties to the Lease and an address to which written notices may be sent to the parties;
- (c) the duration of the Lease and any option to renew, including time and manner for exercise, additional consideration, notice to lenders, whether default restricts exercise of option, and recording;

- (d) the effective date of the Lease;
- (e) the rent and payment requirements, including payment due dates, payee, place of payment; and if applicable, any adjustment, including how and when the adjustment will be done, when the adjustment will be effective, and how disputes regarding the adjustment or rental payment will be resolved, and form of payment;
- (f) any late payment charges, interest, or special fees;
- (g) any due diligence requirements, if applicable;
- (h) any required bond or other form of financial security;
- (i) any insurance requirements, if applicable;
- (j) ownership, construction, maintenance, and management of Permanent Improvements; and
- (k) any other terms and conditions negotiated by the parties or required by this chapter.

(3) A Lease must include the following provision:

The obligations of the Lessee and its Mortgagee to the Pueblo are also enforceable by the United States, so long as the leased premises remain in Trust or Restricted Status.

(4) Unless the Lessee would be prohibited by law from doing so, the Lease must also contain the following provisions:

- (a) The Lessee holds the United States and the Pueblo harmless from any loss, liability, or damages arising out of the Lessee's use or occupation of the leased premises; and
- (b) The Lessee Indemnifies the United States and Pueblo against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the Lease term,

regardless of fault, except that the Lessee is not required to Indemnify the Pueblo for liability or cost arising from the negligence or willful misconduct of the Pueblo or the United States.

G. Approval of Lease.

- (1) At the conclusion of the leasing process under this part, which includes submittal of complete Application, any requested additional information or documentation, environmental review, and lease negotiation, the director of the Department shall report to Pueblo Council within thirty (30) days that a Lease under this chapter is available for consideration, and the Department may recommend approval of the Lease on terms as negotiated between the Lessee and Department.
- (2) Leases governed by this chapter must be approved by the Pueblo Council, under Article IX of the Pueblo of Laguna Constitution (2012), upon determination such Lease is in the Pueblo's best interest under the absolute and unreviewable discretion of Pueblo Council.
- (3) Any document purported to be a Lease that was not approved by Pueblo Council is void and unenforceable under this chapter.
- (4) Pueblo Council's approval of a Lease shall be by resolution.
- (5) Any Lease approved by Pueblo Council resolution under this chapter shall be signed by the Governor, or his authorized designee, on behalf of the Pueblo.
- (6) Approval of a Lease under this chapter satisfies the Council's consent requirement for residence on the Pueblo under Article I, Section 3 of the Pueblo of Laguna Constitution (2012), and establishes the jurisdiction of the Pueblo Court over such Lessee and other occupants under Article V, Section 3 of the Pueblo of Laguna Constitution (2012).

Section 8-2-12. Lease Duration.

The Pueblo Council may approve a Lease for residential purposes under this chapter for any duration that does not exceed seventy-five (75) years. A Lease may provide for an initial term of less than 75

years with a provision for one or more renewals, so long as the total term, including all renewals, does not exceed 75 years.

Section 8-2-13. Rent and Payments.

- A. A Lease of Pueblo Land may provide for the payment of any amount of rent or other compensation negotiated by the Department on behalf of the Pueblo. The Department shall determine appropriate rent for a Lease through a market analysis, appraisal, other valuation method, by negotiation, or in accordance with Subsection B.
- B. **Nominal Rent.** The Pueblo Council will accept nominal rent, less than market value rent, and/or in-kind consideration for a Lease of Pueblo Land, including conversion of a Pueblo Land Assignment to a Lease in accordance with Section 8-2-8 and Section 8-2-13.C, under the following circumstances:
 - (1) Lessee is any Pueblo entity, LHDME, or other low-income private or public housing developer that intends to develop, build, construct, remodel, renovate, expand, or improve a Single-family Residence, a Single-family Residential Development, and/or related Permanent Improvements; or
 - (2) Lessee is a Pueblo member and intends to obtain financing under a Leasehold Mortgage for the placement, erection, construction, remodeling, renovation, expansion, or improvement of a Single-family Residence or related Permanent Improvement; or
 - (3) Lessee is a Pueblo member and intends to accept from LHDME or other low-income housing entity the placement, erection, construction, remodeling, renovation, expansion, or improvement of a Single-family Residence or related Permanent Improvement for which a LURA is required as a condition of acceptance.
 - (4) Pueblo Council determines that the occupancy of a Lease Applicant will be beneficial to the community (e.g., professional, administrator, police officer, teacher, etc.) and elects to accept Lessee's services to and presence in the community as whole or partial in-kind consideration.

- C. **Use Rights.** Consideration for the conversion of a Pueblo Land Assignment to a Lease for nominal rent under Subsection B is Lessee's agreement to extinguish the Use Rights associated with that Pueblo Land Assignment for the duration of the Lease.
- D. **Payments.** Monetary rent shall be payable to the Pueblo and remitted to the Pueblo Treasurer, who shall account to the Department for rent received for Pueblo Land.
- E. If a Lease is within an Indian irrigation project or drainage district for which the Secretary assesses and collects a fee to administer, operate, maintain, or rehabilitate as provided by 25 C.F.R. Part 171, the Lease must state that the Lessee shall pay all operation and maintenance charges that accrue during the Lease term, unless an exception in Part 171 applies. The Lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

Section 8-2-14. Description of Land.

- A. Except as provided in Subsection B, a Lease shall describe the leased premises by reference to a land survey prepared by a professional surveyor licensed by the New Mexico state board of licensure for professional engineers and professional surveyors.
- B. If the leased parcel is not described by reference to a land survey, then a professional surveyor or the Pueblo's geographic information systems program (mapping) or public works department may describe the leased premises using one or more of the following methods, each of which must be of sufficient detail to meet the recording requirements of the LTRO:
 - (1) a legal description; or
 - (2) a survey-grade global positioning system description.

Section 8-2-15. Bonding.

- A. The Department may require prospective Lessee to file a bond or provide other security, which is payable to the Pueblo Treasurer, to ensure or guarantee:
 - (1) rent payment for an amount to be negotiated or determined by the Council;

(2) construction of any Permanent Improvement; or

(3) performance of any other obligation under the Lease.

- B. **Notice of Cancellation.** Lessee shall provide the Department with 30 days' written notice of cancellation of any bond required under Subsection A.

Section 8-2-16. Insurance.

- A. The Department may require the prospective Lessee to secure, maintain, and provide proof to the Department of liability and/or casualty insurance, and to require that the Pueblo and the United States are additional named insured parties, in amounts sufficient to cover any Permanent Improvement, personal injury or death, or any other risk to which the Pueblo and the United States may be exposed.
- B. **Notice of Cancellation.** Lessee shall provide the Department with 30 days' written notice of cancellation of any insurance required under Subsection A.

Section 8-2-17. Late Payments.

- A. The Department may issue invoices to a Lessee in advance of the dates on which rent payments are due under a Lease. Provided that Lease compensation is greater than nominal or in-kind, a Lease shall specify the rate of interest to be charged if the lessee fails to make Lease payments on time, and identify additional late payment fees.
- B. Unless the Lease provides otherwise, interest charges and late payment fees will apply in the absence of any notice to the lessee from the Department, and the lessee's failure to pay such amounts constitutes a violation of the Lease.

.Section 8-2-18. Effective Date of Lease and Documents. A Lease and any Lease related document, including any amendment, Lease Assignment, Sublease, Leasehold Mortgage, or LURA, must state an effective date to be valid.

Part 3 – Improvements, Sublease, and Leasehold Mortgage.

Section 8-2-19. Permanent Improvements.

- A. **Requirement for Approval.** Unless otherwise provided in the Lease, Lessee shall be responsible for placing, constructing, maintaining, and using a Single-family Residence or Permanent Improvement located on Pueblo Land under a Lease, and prior to such activity the Lessee or sublessee of a Lease shall obtain any necessary governmental permit, approval, or authorization, including approval by a Village Official, if the leased premise is located within a Village that requires such approval.
- B. **Ownership of Permanent Improvement.** Lessee shall own any Permanent Improvement to the leased premises for the duration of the Lease, subject to any interest created by a Leasehold Mortgage, LURA, or Lease Assignment.
- C. **Right of Removal.** Unless otherwise provided in the Lease or by law, the following govern the disposition of Permanent Improvements upon expiration, termination, or cancellation of a Lease:
- (1) Lessee shall remove every Permanent Improvement from Pueblo Land upon expiration of the Lease and shall restore Pueblo Land to its original condition, so far as is reasonably possible.
 - (2) No Permanent Improvement may be removed without the Department's approval, if a Lessee owes rent or any other sums under the Lease, is in breach of any Lease obligation, has created a Lease Assignment, or is in default on a Leasehold Mortgage or a LURA.
 - (3) Within sixty (60) days after expiration, or termination of the Lease not caused by default of Lessee or sublessee, the Lessee or sublessee shall be entitled to remove the Single-family Residence and Permanent Improvements from the leased premises and relocate such improvements to an alternative site, not located on the leased premises.
 - (4) Any Lessee who exercises the right of removal in Subsection C(3) must pay costs related to the relocation of Permanent Improvements and shall restore Pueblo Land to its original condition, so far as is reasonably possible.
 - (5) Any Permanent Improvement or other property abandoned on Pueblo Land at expiration or termination of Lease, or after the expiration of the removal period under

Subsection C(3), shall automatically become the property of the Pueblo, unless prior to ninety (90) days after expiration or termination of the Lease the Pueblo notifies Lessee in writing of its election to declare such abandoned property a nuisance.

- (6) Lessee's obligation to remove Permanent Improvements from Pueblo Land and to restore Pueblo Land survives the expiration or termination of the Lease.

Section 8-2-20. Amendment, Sublease, or Lease Assignment

- A. **Approval Required.** Pueblo Council may approve a provision in a Lease allowing amendment, Sublease, or Lease Assignment without further approval of Council. Unless the Lease expressly provides otherwise, the following govern an amendment, Sublease, or Lease Assignment:
 - (1) An amendment, Sublease or Lease Assignment shall be void without Pueblo Council's approval.
 - (2) Pueblo Council may condition its approval upon any terms or conditions deemed to be in the Pueblo's best interests, including approval by a Village Official.
 - (3) Pueblo Council's approval does not relieve the Lessee from any liability that may have arisen prior to an amendment, Sublease, or Lease Assignment.
 - (4) Pueblo Council's approval does not release the Lessee from its continuing and primary liability for performance of all terms, duties, and obligations under the Lease.
 - (5) Pueblo Council's approval does not constitute approval of any subsequent amendment, Sublease, or Lease Assignment.
- B. **Application.** The Lessee shall file an Application with the Department, in accordance with Section 11, for any amendment, Sublease, or Lease Assignment.
- C. **No Extension of Lease; Notice.** No amendment, Sublease, or Lease Assignment will extend the term of the Lease, and the Lessee shall notify its sublessee or assignee of the terms and conditions of the Lease.

- D. **Effect of Lease Expiration.** The expiration of the Lease automatically, and without notice, terminates any amendment, Sublease, or Lease Assignment, unless otherwise agreed to in writing by the Pueblo Council.

Section 8-2-21. Leasehold Mortgage.

- A. Council's approval of a Lease under this chapter automatically authorizes the Lessee's or sublessee's interest in the Lease, Sublease, or any Permanent Improvement to be made the subject of a Leasehold Mortgage pursuant to Pueblo of Laguna "Mortgage, Foreclosure and Eviction Code," Section 8-1-1 *et seq.*, or its successor, without Council's further approval.
- B. A Leasehold Mortgage vests no right, title, interest, claim or privilege in the Mortgagee against the reversionary interest of the Pueblo in the Pueblo Land under Lease, except in accordance with the Pueblo of Laguna "Mortgage, Foreclosure and Eviction Code," Section 8-1-1 *et seq.*, or its successor.
- C. Except as otherwise provided in Subsection D, Lessee or sublessee shall not assign rights or duties of a Lease, and such attempt shall be void, without the prior written consent of the:
- (1) Pueblo Council; and,
 - (2) The Mortgagee or guarantor (including a guaranteeing government agency) where the Lease and/or any Permanent Improvements on the premises are subject to a Leasehold Mortgage.
- D. Lessee or sublessee may assign the Lease and/or deliver possession of the leased premises, including any Permanent Improvements thereon, without Pueblo Council approval, to the Mortgagee or its successor in interest in lieu of foreclosure where there is default of the Leasehold Mortgage.
- E. **Application.** When required by this chapter, a Lessee or sublessee shall apply in writing to the Department and receive consent in writing to assign as collateral or mortgage the Lessee's or sublessee's interest in the Lease, Sublease, or any Permanent Improvement on the leased premises.

- F. **Recording.** Within five days of the closing, the Lessee or Mortgagee shall provide to the Department and the Pueblo Secretary a copy of any Leasehold Mortgage, and the Department shall record a Leasehold Mortgage with LTRO.

Section 8-2-22. Notice of Breach of Leasehold Mortgage; Cure.

- A. The Mortgagee shall provide the Department written notice of a breach or default of the Leasehold Mortgage, Lease, or Sublease in accordance with Section 8-2-30 at the following address:
- Pueblo of Laguna
Environment and Natural Resources Department
P.O. Box 194
Laguna, NM 87026
- B. The Lessee, sublessee, assignee, or Mortgagee may cure the Lessee's or sublessee's breach or default within the time period provided under the Lease or Leasehold Mortgage.
- C. The Lease, Sublease, or Leasehold Mortgage may provide that the Pueblo, assignee, or Mortgagee may succeed to the rights and duties of the Lessee or sublessee in accordance with Mortgage, Foreclosure, and Eviction Code, § 8-1-1 *et seq.*, or under the conditions provided in the Lease or Sublease.

Part 4 - Pueblo Environmental Compliance Review.

Section 8-2-23. Preparation of Environmental Review Statement.

- A. **Requirements.** Except as provided in this section under subsections B or C, the Department shall prepare or obtain an environmental review statement in accordance with this Part 4 that identifies and evaluates any Significant Effects of the proposed Lease on the Environment.
- (1) The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, does not apply to any Lease or approval of any Lease under this chapter, except as provided in paragraph (3).

(2) The Department shall not be bound by NEPA or its implementing regulations in administering the provisions of this Part 4.

(3) Notwithstanding paragraph (1) and (2), LHDME shall be responsible for ensuring compliance with this part, NEPA, and HUD implementing regulations so long as Section 105 of the Native American Housing Assistance and Self-Determination Act (NAHASDA), 42 U.S.C. § 4101 *et seq.*, and implementing regulations, or any applicable law require compliance with NEPA as a condition for funding.

B. Categorical Exclusions. The following actions do not individually or cumulatively have Significant Effect on the Environment and are categorically excluded from the procedures set forth in Sections 8-2-24 through 8-2-27.

(1) A Lease for the proposed placement, erection, or improvement of a Single-family Residence and associated Permanent Improvements, access, and utilities on a parcel of Pueblo Land on which a dwelling was previously located.

(2) A Lease for the proposed placement, erection, or improvement of a Single-family Residence and associated Permanent Improvements, access, and utilities on a parcel of Pueblo Land within a Village of the Pueblo:

(a) that has been previously used as a site for a dwelling, or

(b) for which the relevant Village has approved and designated the parcel for residential use.

(3) A Lease for the proposed placement, erection, or improvement of a Single-family Residence and associated improvements, access, and utilities on a parcel of contiguous Pueblo Land encompassing five (5) acres or less, provided that such site and associated improvements do not adversely affect any Pueblo cultural resource or historic property.

C. Exceptions to Environmental Review Process by Department. The Department need not prepare an environmental review statement required by Section 8-2-23.A for a Lease of Pueblo Land based on the use of the following as a substitute:

- (1) An environmental review conducted by the Department in accordance with this chapter within preceding ten (10) years; or
 - (2) An environmental review conducted by a State agency, federal agency, or a non-Pueblo entity or person in accordance with NEPA or other applicable law within the preceding ten (10) years.
- D. **Report.** The Department shall issue a written report to Pueblo Council documenting its decision not to prepare or obtain an environmental review statement based on any of the provisions in Subsection B or C.
- E. The Department may require the prospective Lessee to provide the Department with a written preliminary environmental statement, which prospective Lessee certifies as complete and accurate to the best its knowledge, and describes the following that may occur as a result of activities conducted under the proposed Lease:
- (1) anticipated ground disturbance;
 - (2) anticipated quantity of water use and the source of water;
 - (3) potential discharges into waters or wetlands;
 - (4) anticipated emissions resulting from construction or operations; and
 - (5) impact to fish or wildlife.

Section 8-2-24. Public Participation.

- A. **Public Notice.** The Department shall notify the Public of the availability for review its environmental review statement by any one or more of the following methods:
- (1) publishing the notice in a newspaper or newsletter of general circulation in the Pueblo community for at least fifteen (15) calendar days;
 - (2) posting the notice at Pueblo administration buildings and other places with public access within the Pueblo for at least fifteen (15) calendar days; or
 - (3) disseminating the notice in any other manner reasonably determined to reach, and be available to, the Public for at least fifteen (15) calendar days.

B. Notice Contents. The notice of environmental review statement must contain the following information:

- (1) a summary of the proposed Lease;
- (2) a summary of the need for the proposed Lease;
- (3) a summary of the environmental review statement;
- (4) the location where the Public can, without charge, obtain a copy;
- (5) the Department's recommendation on the proposed Lease; and
- (6) an invitation to the Public to submit written comments to the Department regarding the environmental review statement during a comment period not to exceed twenty (20) calendar days from the date the notice is published.

C. Public Comments; Response.

- (1) The Department shall consider written comments received from the Public and provide a written response to relevant and substantive comments within twenty (20) calendar days of the closing of the comment period and prior to forwarding a Lease to Pueblo Council for action.
- (2) The Department's written response will identify any recommended mitigation or conditions of approval on the proposed Lease.
- (3) Based on comments received and without need of initiating another comment period, the Department may revise the environmental review statement, or suggest the imposition of restrictions as a condition of approval of the proposed Lease.
- (4) The Department shall notify the Public of its response to comments and recommendation to Pueblo Council by the same means selected to notify the Public in accordance with Section 8-2-24.A.

Section 8-2-25. Environmental Review Statement.

- A. **Contents.** The environmental review statement need only consider the substantive features of the proposed Lease and does not need to consider alternative actions or transactions, including a no-action alternative, but shall consider Significant Effects.
- B. **Minimum Review Requirements.** The level of detail and depth of the analysis conducted by the Department is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment.

Section 8-2-26. Environmental Review Statement Documentation.

An environmental review statement may be prepared in any format to facilitate identification and evaluation of any Significant Effects of the proposed Lease on the Environment.

Section 8-2-27. Environmental Review Prepared by Another Entity.

The Department may rely on and publish the environmental review statement of a State agency, federal agency, or any other person or entity to fulfill the Department's requirements for environmental review process under this Part 4.

Section 8-2-28. Conclusion of Environmental Review Statement Process.

- A. **Consideration Requirements.** The Pueblo Council may approve or disapprove the proposed Lease only after the Department:
 - (1) identifies and evaluates any Significant Effects of a proposed Lease on the Environment;
 - (2) publishes notice of environmental review statement;
 - (3) receives and reviews Public comments, if any;
 - (4) provides written responses to any Public comments, if any; and
 - (5) determines any restrictions or conditions to Lease approval; or
 - (6) determines, in accordance with Section 8-2-23.B (categorical exclusion) that no environmental review statement is required.

- B. **Appeal.** The Public or the proposed Lessee may appeal the Department's determination related to its environmental review statement to the Pueblo Court in accordance with Part 7.
- C. A timely appeal of the Department's environmental review statement determination suspends Pueblo Council approval action until resolution of the appeal by Pueblo Court.

Part 5 - Lease Administration.

Section 8-2-29. Administration.

- A. **Administration under Ordinance and Federal Law.** The Department shall act as agent of the Pueblo as Lessor to administer any Lease approved under this chapter and any Lease approved prior to enactment of this chapter.
- B. **Management Practices.** The Department shall employ sound real estate management practices, including collections, monitoring, enforcement, relief, and remedies.
- C. **Inspection of Leased Premises.** The Department, or an authorized representative, as well as the relevant Mortgagee or guaranteeing government agency, has the right at any reasonable times during the term of a Lease and upon reasonable notice to Lessee or sublessee to enter upon leased premises within the Pueblo to inspect the same and any Permanent Improvement erected or placed thereon.

Section 8-2-30. Notice. The Department, Lessee, and interested parties to a Lease shall provide notice to each other in accordance with this Section.

- A. For a notice to be valid, it must be in writing and delivered by:
 - (1) personal delivery by Department staff to any occupant of the leased premises;
 - (2) posting such document by Department staff on all exterior entrances to all Single-family Residences located on the leased premises;
 - (3) electronic mail to the address provided to the Department by the Lessee or sublessee;

- (4) a national courier to the physical address of the leased premises, with all fees prepaid;
or
 - (5) registered or certified mail to the postal address on file with the Department, return receipt requested and postage prepaid.
- B. A notice will be effective when received by the recipient, and will be deemed to have been received as follows:
 - (1) if it is delivered by personal delivery, delivered by a national courier, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, then upon receipt as indicated by the date on the signed receipt; or
 - (2) if by posting or electronic mail, or if the recipient rejects or otherwise refuses to accept notice, or if notice cannot be delivered because of a change in address for which no notice was given, then upon the date of that posting, electronic mailing, rejection, refusal, or inability to deliver.

Section 8-2-31. Accounting.

The Pueblo's Office of the Treasurer shall implement and maintain an accounting system to ensure proper accounting of fees and collected rent payments for any Lease in accordance with generally accepted accounting principles.

Section 8-2-32. Administrative Fees.

The Department may charge an administrative fee to cover the expense of processing a Lease, Sublease, Assignment, Leasehold Mortgage, amendment, or other transaction under this chapter.

Section 8-2-33. Documentation.

- A. **Recording.** Any Lease, amendment, Lease Assignment, Leasehold Mortgage, LURA, or an instrument of premature termination must be filed by the Department in accordance with this chapter with the Pueblo Secretary and an original or certified copy of such instrument sent to the LTRO for recording or processing as required under applicable regulations or policy.

- B. The Department shall provide documentation showing rental payments to the Pueblo sufficient to enable the Secretary to discharge the trust responsibility of the United States under 25 U.S.C. § 415(h)(7).

Part 6 - Enforcement

Section 8-2-34. Enforcement.

- A. The Department shall enforce the covenants, terms and conditions of any Lease approved in accordance with this chapter, as well as any Lease for residential purposes approved prior to enactment of this chapter.
- B. Nothing in this chapter prohibits the Department from requesting, or limits the authority of, the Secretary to enforce the terms and conditions of, or cancel, any Lease.

Section 8-2-35. Violations, Cancellation, and Remedies.

- A. **Violation; Cure.** A violation of the Lease includes a failure to pay any rent or other monetary obligation due under the Lease, violation of any term, condition, or covenant of the Lease, or failure to perform or observe any other obligation under the Lease by any party. Unless otherwise stated in a Lease, a party to a Lease shall be in default under a Lease if a violation of the Lease is not cured within 30 days after a party to the Lease gives notice of the violation to the violating party.
- B. **Cancellation.** A violation of the Lease by the Lessee may result in Lessor's cancellation of the Lease.
- C. **Remedies.**
 - (1) On the violation of a Lease term, condition or covenant, a party to the Lease, as well as the Secretary, Mortgagee, or government guaranteeing agency, shall have the relevant remedies available, at law or in equity, in Pueblo Court and as provided in the Lease, including negotiated remedies, cancellation of the Lease, a proceeding to recover any damages from Lessee, sublessee or Mortgagee, or a proceeding to seek

injunction or writ of mandamus against the Department or Pueblo official to perform covenants, terms, or conditions of the Lease.

(2) If the Lessee does not cure a violation of a Lease within the required cure period, the Department may, unless otherwise provided in the Lease, seek to cancel the Lease upon notice to the Lessee and any surety and Mortgagee of the cancellation, in addition to any other remedies.

(3) A notice of cancellation for a Lease must:

- (a) provide an explanation to the grounds for cancellation;
- (b) notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease, if applicable;
- (c) notify the Lessee of the Lessee's right to appeal under Part 7, including the possibility that Pueblo Court may require the Lessee to post an appeal bond;
- (d) order the Lessee to vacate the property within thirty (30) days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
- (e) order the Lessee to take any other action the Department deems necessary to protect the Pueblo, if applicable.

D. **Compliance with Lease.** Pending resolution of any dispute, the Lessee shall continue to pay rent and comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leased premises.

Section 8-2-36. Nuisance; Harmful or Threatening Activity.

A. **Abatement of Nuisance.** The Department may take any necessary action to abate a nuisance on a Leased parcel or created by Lease occupancy or activities, including unauthorized or abandoned Permanent Improvements, and other abandoned property. For purposes of this section “nuisance” shall have the same definition as “nuisance” under Section 8-1-4(r) of the Pueblo of Laguna Code.

B. **Harmful or Threatening Activity.** If a Lessee or other party or person causes or threatens to cause immediate and significant harm to the leased premises, public health,

or public safety, or engages in criminal activity on the leased premises, the Department may take emergency action in accordance with Pueblo Law, including cancelling the Lease, commencing eviction proceedings in Pueblo Court, seeking forcible entry and detainer, or taking any other action deemed appropriate to protect the public interest, the leased premises, or the Environment.

- C. Expenses, costs, and fees incurred by the Department to remove unauthorized Permanent Improvements or to mitigate damage or waste to Pueblo Land arising from use or occupancy under a Lease shall remain the sole liability of the Lessee and are deemed additional rent due by Lessee at the time incurred.

Section 8-2-37. Holdover and Trespass.

Except as provided in Sections 8-2-9 or 8-2-10, a Lessee or successor in interest to a Lease remaining in possession of the leased premises after expiration or cancellation of any Lease constitutes trespass on Pueblo Land and is subject to any remedy available under Pueblo Law or federal law.

Part 7 - Court Review.

Section 8-2-38. Jurisdiction.

- A. The Pueblo Court has jurisdiction over any action to enforce the covenants, terms and conditions of a Lease approved by Pueblo Council.
- B. The Pueblo Court has jurisdiction over an action that seeks to compel Department action under Section 8-2-11.F(1) of this chapter or to challenge the Department's determination under this chapter in Sections 8-2-28, -34, -35, -36, or -37.
- C. The Pueblo Court does not have jurisdiction over Pueblo Council to compel approval or disapproval of any Lease.

Section 8-2-39. Action by Department.

An action by the Department to enforce any covenant, term or condition of a Lease may be commenced without a filing fee in the Pueblo Court, and shall be styled as: “Pueblo of Laguna, ex rel. Environmental and Natural Resources Department, Petitioner vs. (Lessee’s name) , Respondent.”

Section 8-2-40. Appeal of Department Action.

A. Notice of Appeal; Contents; Service.

- (1) The Lessee or interested party may appeal the Department's inaction under Section 8-2-11.F(1) or any final determination of the Department under this chapter in Sections 8-2-28, -34, -35, -36, or -37 to the Pueblo Court by filing a notice of appeal with the proper filing fee in the Pueblo Court within fourteen (14) calendar days of the:
 - (a) Department's written determination; or
 - (b) Date upon which Department action was required to be complete.
- (2) Pueblo Court has no jurisdiction to consider an appeal filed beyond the appeal period stated in Subsection A(1), and upon failure to timely file an appeal the Department’s determination or action becomes final for all purposes.
- (3) The notice to initiate an appeal must be styled as “ (Lessee’s or interested party’s name) , Petitioner vs. Pueblo of Laguna, ex rel. Environmental and Natural Resources Department, Respondent,” and state the following:
 - (a) Lessee's or interested party's interest in the Lease;
 - (b) The facts necessary to understand circumstances giving rise to the appeal;
 - (c) The question or issue to be resolved; and
 - (d) Relief sought.
- (4) The Lessee or interested party shall provide Notice in accordance with Section 8-2-30 or by service of process under the Pueblo’s Rules of Civil Procedure to the director of the Department and the Governor of the Pueblo promptly after the filing of the notice of appeal in the Pueblo Court, and the Department’s time period to respond under

Pueblo Court procedures does not begin until Notice is provided as required by Section 8-2-30 or by service of process under such Rules of Civil Procedure.

- B. **Scope of Review.** Pueblo Court shall only review the administrative record and pleadings, and shall uphold the Department's final determination or action unless it finds that the Department's action:
- (1) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law;
 - (2) exceeded the Department's jurisdiction, authority, or limitations; or
 - (3) is unsupported by evidence.

Section 8-2-41. Appeal Bond.

Upon the Department's motion, Pueblo Court may require the Lessee or interested party to file a bond or provide other security in any form and amount necessary to protect the Department or Pueblo from financial losses during the course of an appeal.

Section 8-2-42. Procedures.

Any action under Part 7 shall be:

- A. Conducted in accordance with the applicable Rules of Civil Procedure for the Pueblo Court;
- B. Decided only by a Pueblo Court judge, rather than a jury; and
- C. Determined based on a preponderance of the evidence.

Section 8-2-43. Sovereign Immunity.

- A. The Pueblo retains sovereign immunity from suit, except that such immunity is waived for the Pueblo and Department solely for the purpose of resolving an appeal in Pueblo Court as provided in Section 8-2-40 or for enforcement of any Lease covenant, term, or condition by a party to a Lease or Leasehold Mortgage under this chapter.

- B. The waiver of immunity in Subsection A is limited to injunctive relief and direct compensatory damages, if any, occasioned by an act or omission of a Pueblo employee, agent, or official, including Village Official, in violation of a Lease covenant, term, or condition or provision of this chapter.
- C. Pueblo immunity is not waived for indirect, punitive, or exemplary damages or damages under any theory of tort or for civil rights violation arising under or related to a Lease.
- D. Unless a term of the Lease expresses otherwise, the Pueblo does not waive its immunity or the Department's immunity before any tribunal other than the Pueblo Court and in the Pueblo Court only to the extent expressed in this section.

Part 8 – Miscellaneous Provisions.

Section 8-2-44. Regulations.

The Department may issue regulations and operating procedures to implement this chapter.

Section 8-2-45. Amendments.

- A. **Substantive Amendments.** Pueblo Council may propose amendments to this chapter concerning matters specifically governed by 25 U.S.C. § 415(h) and its implementing regulations, subject to approval of the Secretary.
- B. **Non-federal or Technical Amendments.** Pueblo Council may approve and enact any amendment to this chapter that does not involve a matter governed by 25 U.S.C. § 415(h) without approval of the Secretary, and shall provide notice of such enacted amendment to the Secretary.

Section 8-2-46. Severability.

If any court of competent jurisdiction determines any provision of this chapter to be invalid, void, or unenforceable, the remaining provisions of this chapter remain in full force and effect without regard to the invalid, void, or unenforceable provision.

Section 8-2-47. Effective Date.

The Residential Leasing Code shall take effect upon approval by the Secretary or by the Secretary's authorized designee pursuant to 209 Department Manuals, Chapter 8: Assistant Secretary – Indian Affairs, 8.1 Delegation.