



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

**APPROVAL OF**

**SAN PASQUAL BAND OF DIEGUENO MISSION  
INDIANS OF CALIFORNIA  
LEASING ORDINANCE**

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The attached Leasing Ordinance, submitted by the San Pasqual Band of Mission Indians (listed in the Federal Register, Vol. 85, No. 20 FR 5465 (January 30, 2020) as the San Pasqual Band of Diegueno Mission Indians of 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 San Pasqual Business Committee on July 14, 2020, is hereby approved.

Dated: NOV 05 2020

A handwritten signature in blue ink, appearing to read "A. S. [unclear]". The signature is written over a horizontal line.

Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



# SAN PASQUAL BAND OF MISSION INDIANS

## SAN PASQUAL RESERVATION

### SAN PASQUAL BAND OF MISSION INDIANS BUSINESS SITE LEASING ORDINANCE

#### TRIBAL COUNCIL

Stephen W. Cope  
Chairman

Justin Quis Quis  
Vice Chairman

Tilda M. Green  
Secretary-Treasurer

David L. Toler  
Councilman

Joe Chavez  
Councilman

#### CHAPTER ONE INTRODUCTION

##### SECTION:

**1.1 Authority and Delegation.** This Ordinance is enacted by the General Council pursuant to the HEARTH Act, 25 U.S.C. § 415(h) and pursuant to the powers vested to it under Article VIII of the San Pasqual Constitution. Section 1(c) of Article VIII gives the General Council the authority to “veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other assets of the band made by any authority other than the general council.” Section 1(f) of Article VIII gives the General Council the authority to “administer assets of the band and to manage all economic affairs of the band.” Section 1(j) of Article VIII gives the General Council the authority to “delegate administrative authority and functions to the business committee or any other committee which it might establish.”

**1.2 Scope.** The application of this Ordinance shall be limited to Business Site Leases (defined below) approved pursuant to this Ordinance and the HEARTH Act, governing leases on Tribal Trust Land (defined below), and to all actions and decisions taken in connection with those Leases. Nothing herein shall be construed to affect the terms and conditions of existing leases or any land assignments of Tribal land made pursuant to Article VIII, Section 1(k) of the Constitution, and this Ordinance shall not apply to individually owned Indian allotted land or to mineral leases or to leases of fee land.

**1.3 Purpose.** The purposes of this Ordinance are to:

- (a) Recognize the authority of the Tribe to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review;
- (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Tribe;
- (c) Implement the HEARTH Act;

# BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (d) Delegate authority to the San Pasqual Economic Development Corporation to negotiate, enter into, approve, manage and administer specified Business Site Leases for and on behalf of the Tribe under the process as specified herein; and
- (e) Provide specified guidance for the lease of lands of the Tribe by the Tribe to the San Pasqual Economic Development Corporation.

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

## CHAPTER TWO DEFINITIONS

### SECTION:

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

- (a) “*Amendment*” means an amendment to a Business Site Lease.
- (b) “*Assignment*” means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee’s rights and assumes all or some the Lessee’s obligations under a Business Site Lease.
- (c) “*Best Interest of the Tribe*” means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- (d) “*BIA*” means the Bureau of Indian Affairs, U.S. Department of the Interior.
- (e) “*Business Committee*” means the Business Committee of the Tribe as set forth in Article IV, Section 2 of the Constitution.
- (f) “*Business Site Lease(s)*” means the same as “Lease” but shall be limited to leases of Tribal Trust Land for business and commercial purposes.

BUSINESS SITE LEASING ORDINANCE  
July 14, 2020

- (g) *“Change in Land Use”* means the change from one use to another that significantly differs from the former use.
- (h) *“Constitution”* means the Constitution and Bylaws of the Tribe, as amended from time to time.
- (i) *“Development Period”* means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- (j) *“Environmental Review Process”* means the Tribe’s process for conducting an environmental review to assess the impacts of a proposed development activity undertaken pursuant to a Business Site Lease.
- (k) *“Environmental Reviewer”* means an official or officials from, or a qualified consultant hired by, the Tribe’s Environmental Department or as otherwise designated by the Business Committee.
- (l) *“Executing Official”* means (i) for Leases to the San Pasqual Economic Development Corporation, the Tribal Chairman of the Business Committee or the Tribal Chairman’s properly authorized designee as the Lessor; and (ii) for all other Leases, the chairman of the Board of Directors of the San Pasqual Economic Development Corporation or the Chairman’s properly authorized designee as the Lessor. The Executing Official shall execute all approved Business Site Leases, subleases, amendments, modifications, assignments, terminations and cancellations of Leases and subleases.
- (m) *“Fair Annual Lease Value”* means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified Lease, including term, rental adjustment and revaluation, permitted uses, use restrictions and expense obligations, the Lessee and Lessor each acting prudently and knowledgeably and assuming consummation of a Lease as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (i) Lessee and Lessor are typically motivated;
  - (ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
  - (iii) A reasonable time is allowed for exposure in the open market;
  - (iv) The rent payment is made in terms of cash in U.S. dollars and is expressed as an amount per time period consistent with the payment schedule of the Lease and/or as a percentage of revenue, and the rental amount represents the normal consideration for the property leased, unaffected by special fees or concessions granted by anyone associated with the transaction.
- (n) *“General Council”* means the governing body of the Tribe, consisting of all members nineteen (19) years of age or older, as set forth in Article IV of the Constitution.
- (o) *“HEARTH ACT”* means the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. No. 112-151, 126 Stat. 1150 (2012).
- (p) *“Holdover”* means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires.
- (q) *“Lease”* means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee’s right to possess will limit the Lessor’s right to possess the leased premises only to the extent provided in the Lease.
- (r) *“Lease Administrator”* means (i) for Leases to the San Pasqual Economic Development Corporation, the Business Committee; and (ii) for all other Leases, the San Pasqual Economic Development Corporation.

BUSINESS SITE LEASING ORDINANCE  
July 14, 2020

- (s) *“Leasing Decision”* means the following type of Lease transactions that will be acted on by the Tribe: Lease issuance, Lease amendment or modification, subleasing, Lease assignment or transfer and Space Leases.
- (t) *“Leasehold Mortgage”* means a mortgage, deed of trust, or other instrument that pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- (u) *“Lessee”* means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease pursuant to this Ordinance.
- (v) *“Lessor”* means the Tribe, acting through the San Pasqual Economic Development Corporation.
- (w) *“LTRO”* means the Land Titles and Records Office of the BIA.
- (x) *“Project”* means any authorized activity proposed to occur on Tribal Trust Land pursuant to a Business Site Lease.
- (y) *“Public”* for purposes of the Environmental Review Process means the enrolled members of the Tribe, individuals who live or work on Tribal Trust Land, business entities or other institutions that are engaged in programs or activities on Tribal Trust Land that have a definable, concrete interest that may reasonably be affected by a proposed Business Site Lease, and any other person or entity likely to be significantly affected by the Lease.
- (z) *“San Pasqual Economic Development Corporation”* means the subordinate economic entity of the Tribe established pursuant to the San Pasqual Economic Development Corporation Tribal Charter of Incorporation, approved by the General Council on July 9, 2017 and governed by its Board of Directors.
- (aa) *“Significant Effect on the Environment”* means a substantial, or potentially substantial, adverse change or alteration in the environment involving a physical disturbance to the

BUSINESS SITE LEASING ORDINANCE

July 14, 2020

environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.

- (bb) *“Space Lease”* means a Lease of space within an existing leased premises.
- (cc) *“Sublease”* means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.
- (dd) *“Tribe”* means the San Pasqual Band of Mission Indians.
- (ee) *“Tribal Court”* means the Intertribal Court of Southern California which is hereby authorized to hear appeals from Leasing Decisions under Chapter 6 of this Ordinance.
- (ff) *“Tribal Entity”* means an agency, instrumentality, corporation wholly owned by the Tribe or an agency or instrumentality of the Tribe or other subordinate entity of the Tribe that is wholly owned by the Tribe, including but not limited to the San Pasqual Economic Development Corporation.
- (gg) *“Tribal Trust Land”* means all lands owned by the Tribe over which the Tribe exercises governmental power and that are held in trust or restricted status by the United States for the benefit of the Tribe.
- (hh) *“Trust or Restricted Status”* means (1) the United States holds title to a tract of land in trust for the benefit of the Tribe; or (2) the Tribe holds title to the tract of land, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.
- (ii) *“Trust or Restricted Land”* means any tract in which the United States holds title in trust or restricted status for the benefit of the Tribe.

**CHAPTER THREE**  
**BUSINESS SITE LEASE REQUIREMENTS**

**SECTION:**

**3.1 Terms and Conditions.** Leases shall be governed by the terms and conditions set forth in the Business Site Lease. Unless otherwise provided in the Lease, the terms and conditions of the Lease may be amended only with the prior written approval of all parties to the Lease. The Lessee is responsible for understanding these terms and conditions.

**3.2 Approval Process.**

- (a) In every case in which the San Pasqual Economic Development Corporation is considering or proposing to enter into a Business Site Lease under this Ordinance and a particular lease site has been identified, the San Pasqual Economic Development Corporation shall:
  - (i) notify the Business Committee in writing of any such lease proposal;
  - (ii) provide the Business Committee with a draft of the proposed Lease when available; and
  - (iii) obtain the written approval of the Business Committee before entering into the proposed Lease.
- (b) After all the necessary requirements of this Ordinance have been met, a proposed Business Site Lease shall be approved and executed on behalf of the Tribe by the Executing Official.
- (c) The lease approval process shall be completed within sixty (60) days after Lessee has completed all requirements specified in this Ordinance and the Environmental Review Process is completed, provided, however, that the sixty (60) day period may be extended by the Business Committee if necessary to complete the process.

**3.3 Duration and Renewal.**

- (a) Unless otherwise provided in the Lease, no Lease shall be approved more than 12 months prior to the commencement of



## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

its term. A Lease term shall not be more than 25 years, except that (i) any Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years and (ii) any Lease made for public, religious, educational or recreational purposes may be made for a term not to exceed 75 years.

- (b) If the Lease provides for an option to renew, the Lease must specify:
  - (i) the time and manner in which the option must be exercised or is automatically effective;
  - (ii) that confirmation of the renewal will be submitted to the BIA, unless the Lease provides for automatic renewal;
  - (iii) whether tribal consent to the renewal is required;
  - (iv) that the Lessee must provide notice of the renewal to the Tribe and any sureties and mortgagees;
  - (v) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (vi) any other conditions for renewal (e.g., that the Lessee not be in violation of the Lease at the time of renewal).

**3.4 Obtaining a Business Site Lease.** Information on obtaining a Business Site Lease shall be available from the Lease Administrator.

- (a) All applicants for a Business Site Lease shall submit the following documents to the Lease Administrator:
  - (i) financial statement;
  - (ii) site survey and legal description in the form and substance required by this Ordinance;
  - (iii) tribal environmental review in the form and substance required by this Ordinance;

**BUSINESS SITE LEASING ORDINANCE**

July 14, 2020

- (iv) other documents as may be reasonably required by the Lease Administrator.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions:
  - (i) The tract, location, or parcel of the land being leased, with a legal description in a form and substance that meets the BIA Land Title and Records Office requirements;
  - (ii) The purpose of the Lease and authorized uses of the leased premises;
  - (iii) The parties to the Lease;
  - (iv) The term and effective date of the Lease;
  - (v) Identification of the responsible party for constructing, owning, operating, maintaining and removing any improvements to the leased premises;
  - (vi) Provisions providing for the indemnification of the United States and the Tribe as Lessor from liabilities, costs or damages resulting from the Lessee's use and occupancy of the leased premises;
  - (vii) Rent payment provisions, including but not limited to provisions that
    - (1) specify:
      - (A) the amount of rent;
      - (B) interest and additional late payment penalties;
      - (C) acceptable form(s) of payment;
      - (D) the dates on which all payments are due; and

**BUSINESS SITE LEASING ORDINANCE**

July 14, 2020

(2) require:

(A) the Lessee to make rental payments directly to the Lease Administrator at the address specified in the Lease and provide proof of such payments to the BIA upon the BIA's request; and

(B) unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date of the Lease.

(viii) Due diligence, insurance and bonding requirements;

(ix) A requirement that the leased premises may be used only for purposes authorized under the Lease;

(x) Default, breach of Lease and dispute resolution procedures, including negotiated remedies, if any;

(xi) If the leased premises are within an Indian irrigation project or drainage district, the Lease shall state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, 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;" and

(xii) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the Tribe to determine how to proceed and appropriate disposition.

(c) The Lease Administrator shall ensure that Business Site Leases, subleases, assignments, amendments, leasehold

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

mortgages, renewals, modifications, cancellations and terminations are recorded with the LTRO.

- (d) The Lease Administrator is responsible for maintaining tribal records of all Business Site Leases and for disseminating recorded Lease documents to the Tribe's Environmental Department.
- (e) The Lease Administrator shall send a copy of all approved Business Site Leases and all amendments, cancellations, terminations and renewals to the Business Committee and the Superintendent, Southern California Agency, Bureau of Indian Affairs.
- (f) The Tribe shall send a copy of this Ordinance to the Superintendent, Southern California Agency, Bureau of Indian Affairs.
- (g) Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary of the Interior are the property of the United States.
- (h) Unless the Business Site Lease states otherwise, a Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

**3.5 Space Leases.** Unless otherwise provided in the Lease, Space Leases shall be reviewed and approved pursuant to the terms of this Ordinance.

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

### **3.7 Appraisal; Local Studies.**

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by or on behalf of the Lease Administrator using the following data:  
improvement cost, replacement cost, earning capacity and

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

sales and lease data of comparable sites, or by similar methodology as approved by the Lease Administrator and deemed by the Lease Administrator to be in the best interest of the Tribe. Except with respect to Leases subject to exemptions under Section 3.8 and Leases made under Section 3.14, an appraisal log reporting the methods of appraisal and value of the Tribal Trust Land shall be attached to every Business Site Lease.

- (b) Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. The costs of the licensed appraiser shall be paid by the Lessee, unless the Lease Administrator, at its discretion, agrees to bear a portion of such costs. An appraisal log describing the method of appraisal and value of the leasehold shall be attached to every Business Site Lease.

### **3.8 Fair Annual Lease Value.**

- (a) No Lease shall be approved for less than the present Fair Annual Lease Value, except as follows:
  - (i) The Lease is in the Development Period;
  - (ii) The Lease Administrator has determined that in order to provide an incentive for business to locate on Tribal Trust Land, it will make Lease concessions, provide Lease improvement credits, or provide Lease abatements to attract businesses;
  - (iii) The Lease Administrator determines such action is in the Best Interest of the Tribe;
  - (iv) The Lease is made to a Tribal Entity; or
  - (v) The Lease Administrator determines the Lease is for public, religious, educational or recreational purposes.
- (b) A Lease may be structured as a flat rate Lease.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (c) A Lease may be structured as a flat rate Lease plus a percentage of gross receipts.
- (d) A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
- (e) 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.
- (f) Leases may be structured to allow for Lease rental rate adjustments and Leases with a term of more than five (5) years shall require periodic rental 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 over the adjustments shall be resolved.
- (g) The Lease Administrator shall keep written records of the basis used in determining the Fair Annual Lease Value and the basis for rate adjustments. These records shall be included in any Lease file.

**3.9 Environmental Review Process.** Unless exempted from this requirement under this Ordinance, the Lease Administrator shall not approve a Business Site Lease until the proposed Lessee has completed the Environmental Review Process under Chapter Seven of this Ordinance. Leases approved and executed without complying with this Section 3.9 shall be null and void.

### **3.10 Insurance.**

- (a) A Lessee shall provide insurance necessary to protect the interests of the Tribe, in amounts sufficient to protect all insurable improvements on the leased premises and with carriers qualified to do business in the State of California.
- (b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.
- (c) The Tribe as Lessor and the United States must be identified as additional insured parties.

**BUSINESS SITE LEASING ORDINANCE**  
July 14, 2020

**3.11 Performance Bond.**

- (a) Unless waived by the Lease Administrator in accordance with this Ordinance, the Lessee shall obtain a performance bond in form and substance satisfactory to the Lease Administrator and in an amount sufficient to secure the Lessee's contractual obligations under the Business Site Lease and shall guarantee:
  - (i) The annual Lease payments;
  - (ii) The estimated development cost of improvements; and
  - (iii) Any additional amount necessary to ensure compliance with the Lease.
- (b) The Lease Administrator may waive the bond requirement or reduce the amount if it finds that doing so is in the Best Interest of the Tribe. The Lease Administrator shall waive the bond requirement if the Lease is to a Tribal Entity. The Lease Administrator shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
  - (i) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) Negotiable U.S. Department of Treasury securities;
  - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury; or
  - (v) such other form as may be approved by the Lease Administrator.

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

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the Lease specifies, or provides for the development of:
  - (i) a plan that describes the type and location of any improvements to be built by the Lessee;
  - (ii) a general schedule for construction of the improvements;
  - (iii) unless otherwise provided in the Lease, a time certain for commencement and completion of the improvements.
- (b) Lessee shall provide the Lease Administrator written justification as to the nature of any delay in progress, the anticipated date of construction and completion of the improvements and evidence of progress toward commencement of construction.
- (c) When requested by the Lease Administrator or otherwise required in the Business Site Lease, Lessee shall further provide the Lease Administrator, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Ordinance.
- (e) Authorized improvements to the leased premises shall be the property of the Lessee during the term of the Lease, but shall become the property of the Tribe at the end of the Lease term unless otherwise provided in the Business Site Lease. If improvements are to be removed at the end of the Lease term, the Business Site Lease shall specify the maximum time allowed for such removal, the Lessee's responsibility for such removal and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribe.



## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (f) A Lessee may develop equity value in the improvements and, with the written consent of the Lease Administrator, sell its interest in the Business Site Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at its expiration, cancellation or termination, the Lessor shall purchase improvements to the premises at fair market value.
- (h) Improvements may be subject to taxation by the Tribe.

### **3.13 Subleases, Assignments, Amendments and Leasehold Mortgages.**

- (a) Subleases, Assignments, Amendments or Leasehold Mortgages of any Business Site Lease shall require the written approval of the Lease Administrator and Lessee, unless otherwise provided herein.
- (b) A Business Site Lease may authorize Space Leases, Subleases and Assignments, in whole or in part, without further approval of the Lease Administrator and execution by the Executing Official, provided that a form of the copy of the Space Lease, Sublease or Assignment is provided to the Lease Administrator, the following conditions, where applicable, are stated in the Business Site Lease and the following conditions are satisfied:
  - (i) There is no event of default under the Business Site Lease or this Ordinance;
  - (ii) Any restrictions and use limitations on the use of the leased premises shall continue to apply to any space lessee, subtenant or assignee;
  - (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
  - (iv) The Lessee shall not be relieved of or released from any of its obligations under the Business Site Lease.

This Section 3.13(b) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (c) A Lease may include provisions that permit the Lessee to mortgage the leasehold interest for the purposes of financing to develop and improve the premises, provided that the Lessee obtains the Lease Administrator's prior approval of the Leasehold Mortgage.
- (d) Notwithstanding subsection (c) above, the Lease Administrator's prior approval of a Leasehold Mortgage shall not be required when the Lease initially approved by the Lease Administrator (i) includes a form of Leasehold Mortgage that comports with this Ordinance; (ii) authorizes the issuance of the Leasehold Mortgage; and (iii) the Lease requires the Lessee to provide the Lease Administrator with notice and a final recorded copy of the Leasehold Mortgage.
- (e) If a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagee also is the purchaser, the leasehold mortgagee may assign the Lease without further approval of the Lease Administrator or Lessor, provided that the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the leasehold mortgagee, approval by the Lease Administrator and execution from the Executing Official is required, provided further that the purchaser must agree in writing to be bound by all terms and conditions of the Lease and this Ordinance.

### **3.14 Leases to Tribal Entities.**

- (a) With respect to Leases of Tribal Trust Land to the San Pasqual Economic Development Corporation, the Business Committee shall be the Lease Administrator and the Tribal Chairman shall be the Executing Official.
- (b) Annual rental payments for a Lease described in Section 3.8(a)(iv) or Section 3.8(a)(v) may be in a nominal amount.

**CHAPTER FOUR  
BUSINESS LEASE MANAGEMENT**

**SECTION:**

**4.1 Management.**

- (a) Except where otherwise provided in the Lease or by applicable law, the Lease Administrator shall manage all Business Site Leases pursuant to this Ordinance.
- (b) The San Pasqual Economic Development Corporation may develop and institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies, consistent with the provisions of this Ordinance.

**4.2 Administrative Fees.** The Lease Administrator may impose and collect administrative fees for costs associated with issuing a Lease, Space Lease, Sublease, Assignment, Amendment, Leasehold Mortgage or other administrative transaction required by this Ordinance. The Lease Administrator shall waive any such fees for Leases to Tribal Entities.

**4.3 Taxes.** Notwithstanding any other provision of this Ordinance, (a) subject only to applicable Federal law, permanent improvements on the leased premises, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy or other charges imposed by any State or political subdivision of a State (although such improvements may be subject to taxation by the Tribe); (b) subject only to applicable Federal law, activities under a Lease conducted on the leased premises are not subject to any fee, tax, assessment, levy or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State (although such activities may be subject to taxation by the Tribe); and (c) subject only to applicable Federal law, the leasehold or possessory interest of a Lease is not subject to any fee, tax, assessment, levy or other charge imposed by any State or political subdivision of a State (although leasehold or possessory interests may be subject to taxation by the Tribe).

**CHAPTER FIVE  
ENFORCEMENT**

**SECTION:**

**5.1 Generally.** The Tribe shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Ordinance. This includes the power to enter the leased premises at a reasonable time, with or without notice, assess penalties and assess late payments. In addition to the other express powers delegated to the San Pasqual Economic Development Corporation in this Ordinance, for the avoidance of doubt, for leases other than Leases described in Section 3.14(a), the Tribe hereby delegates (i) its power to enter into approved Business Site Leases as Lessor to the San Pasqual Economic Development Corporation; and (ii) its power to negotiate, administer, manage and oversee Leases, monitor Lease compliance, inspect premises, investigate possible Lease violations, take appropriate enforcement actions, assess penalties, assess late payments, and collect rents, payments, penalties, fees and other sums owed to the Tribe pursuant to this Ordinance to the San Pasqual Economic Development Corporation as its Lease Administrator.

**5.2 Applicable Law.** The law that will apply to all Leases and activities conducted on any leased premises authorized under this Ordinance shall be: this Ordinance, tribal law and applicable Federal law.

**5.3 Defaults.**

- (a) Except as otherwise specified in the Lease for notices of default, if the Lease Administrator determines the Lessee is in default, the Lease Administrator shall send the Lessee a notice of default within ten (10) days of the determination or as soon thereafter as reasonably possible. The notice of default shall be provided by certified U.S. mail, return receipt requested, by commercial overnight courier service or by personal delivery.
- (b) Within the timeframe specified in the Lease, or if no such timeframe is specified then within 10 days of the Lessee's receipt of the notice, the Lessee shall:
  - (i) Cure the default and notify the Lease Administrator in writing that the default has been cured.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (ii) Dispute in writing the Lease Administrator's determination that the Lease is in default and explain why the Lease should not be canceled or terminated; or
- (iii) Request in writing additional time to cure the default.

### **5.4 Remedies.**

- (a) If the Lessee fails to cure the default within the prescribed period, the Lease Administrator may:
  - (i) Cancel the Lease pursuant to this Ordinance;
  - (ii) Grant an extension of time to cure the default;
  - (iii) Pursue other remedies, including execution on bonds, collection of insurance proceeds, or negotiated remedies;
  - (iv) Act in any combination of remedies listed above; or
  - (v) Act pursuant to any other remedy that may be set forth in the Lease or available under applicable law.
- (b) If the Lease Administrator cancels a Business Site Lease, the Lease Administrator shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified U.S. mail, return receipt requested, by commercial overnight courier service or by personal delivery. The cancellation letter shall:
  - (i) Explain the grounds for cancellation;
  - (ii) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
  - (iii) Notify the Lessee of its right to appeal; and
  - (iv) Order the Lessee to vacate the premises within 30 days from receipt of the cancellation letter, if an appeal is not filed by that time.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

- (c) A cancellation shall become effective 31 days after receipt of the cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.
- (d) If the Lease Administrator decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within the designated time period.
- (e) A Business Site Lease may provide either party with negotiated remedies in the event of a lease violation, in addition to those set forth in Section 5.4(a) through 5.4(d) above, including but not limited to the power to terminate the Lease.
- (f) In the event of Lease cancellation, the Lease Administrator shall notify the BIA so that the cancellation may be recorded in the Land Titles and Records Office of the BIA.

**5.5 Penalties.** The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Lease Administrator or the Tribe, and the failure to pay such amount shall be treated as a breach of the Lease.

**5.6 Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the leased premises or undertakes criminal activity thereon, the Lease Administrator may recommend and the Tribe may take appropriate emergency action.

**5.7 Holdover.** If a Lessee remains in possession after the expiration, termination or cancellation of a Lease, the Tribe shall treat such occupation as a trespass. The Lease Administrator or the Tribe shall take appropriate action to recover possession and pursue any other civil or criminal remedies under applicable law. Actions shall be taken pursuant to Tribal laws, or alternatively, the Tribe may make a written request sent by certified US. mail to the BIA for resolution under any applicable Federal laws.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

**5.8 Trespass.** If any person or entity that is not a Lessee occupies the leased premises in violation of the Lease or without the Tribe's and Lessee's written consent, the Lease Administrator or the Tribe may take appropriate action against the person or entity, including without limitation action at law to eject, exclude or remove the person or entity and pursue any other civil or criminal remedies under applicable law.

**5.9 BIA Notification.** The Lease Administrator may at its discretion notify the BIA of any Lease violation and request the BIA initiate any remedies available to it. Upon such notice and request, the BIA may, at its discretion, enforce the provisions of, or cancel, the Lease.

### CHAPTER SIX APPEALS

#### SECTION:

**6.1 Appeals.** Unless an alternative appeals process is provided in the Lease, the Lessee may appeal a determination of the Lease Administrator taking any enforcement action under the Lease, within ten (10) days of receiving notice of the determination. Appeals may be filed with the Tribal Court or other hearing body designated in the Lease. Unless otherwise provided in the rules applicable to the Tribal Court or other hearing body designated in the Lease, such appeals shall be made by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

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

### CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS

#### SECTION:

**7.1 Generally.** Unless a Business Site Lease is exempt under this Chapter, the Lease Administrator shall not approve a Lease until the proposed Lessee has completed the Environmental Review Process set forth in this Chapter and any

implementing regulations adopted by the Tribe. Leases approved and executed without compliance with this Chapter shall be null and void.

## **7.2 Threshold Determination.**

- (a) **Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process.
- (b) **Statutory Exemption for Certain Leases:** Leasing decisions involving a Business Site Lease proposing the use of premises that are the subject of a completed Federal environmental review under the National Environmental Policy Act (“NEPA”) shall be exempt from the Environmental Review Process, and the Lessee shall not be required to prepare a TER (defined below) under Section 7.4 of this Chapter.

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

## **7.4 Environmental Review Process.**

- (a) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the approval of any Business Site Lease, the Environmental Reviewer shall cause to be prepared a tribal environmental report (“TER”), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TER and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TER 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 TER shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place. The TER shall



## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

- (i) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
  - (ii) All Significant Effects on the Environment of the proposed Lease;
  - (iii) In a separate section:
    - (1) Any Significant Effect on the Environment that cannot be avoided if the Lease is approved;
    - (2) Any Significant Effect on the Environment that would be irreversible if the Lease is approved;
    - (3) Any mitigation measures proposed, recommended, or required to lessen, reduce the impact of or eliminate any identified Significant Effect on the Environment.
- (b) In addition to the information required pursuant to subdivision (a) hereof, the TER shall also contain a statement indicating the reasons for determining that various effects of the Lease on the environment outside the exterior boundaries of the San Pasqual Reservation are not significant and consequently have not been discussed in detail in the TER. In the TER, 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.
- (c) The Environmental Reviewer, in consultation with the Project proponent, may select and engage an environmental consultant to prepare the TER or portions thereof. The Project proponent shall pay the reasonable and necessary costs of the environmental consultant.

## BUSINESS SITE LEASING ORDINANCE

July 14, 2020

### **7.5 Notice of Completion of Draft TER.**

- (a) Within no less than thirty (30) days following the completion of the draft TER, the Tribe shall make available to the Public a Notice of Completion and a copy of the draft TER through one of the methods specified in subsection 7.5(b). The Notice of Completion shall include all of the following information:
  - (i) A brief description of the Project;
  - (ii) The proposed location of the Project;
  - (iii) An address where copies of the draft TER are available for review; and
  - (iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TER.
- (b) To satisfy the requirement for public notice and opportunity to comment under this Ordinance, the Tribe will provide notice to the Public by at least one of the procedures specified below:
  - (i) Publication of notice of the Tribe's draft TER in a newspaper of general circulation in the area affected by the proposed Business Site Lease and the opportunity for thirty (30) days to comment on the draft TER; or
  - (ii) Posting of a copy of the Tribe's draft TER in the offices of the Tribe and a notice to the Public on the Tribe's publicly accessible website of the opportunity to comment on the draft TER for thirty (30) days.

**7.6 Response to Public Comments.** After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Environmental Reviewer will provide written responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts. The Environmental Reviewer's written responses shall be made available to the Public through one of the methods specified in subsection 7.5(b).

**BUSINESS SITE LEASING ORDINANCE**  
July 14, 2020

**7.7 Decision to Proceed.** Following the completion of the Environmental Review Process, including any appeal under subsection 6.1, if any, the Leasing Decision of the Lease Administrator shall be final and not subject to challenge or review in any forum.

**CHAPTER EIGHT**  
**SOVEREIGN IMMUNITY**

**SECTION:**

**8.1** Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or the San Pasqual Economic Development Corporation or any of their enterprises, authorities, subordinate economic entities, officers, agents, agencies, departments, or employees.

**CHAPTER NINE**  
**GENERAL PROVISIONS**

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

**9.2** In the event any provision or part of this Ordinance is found to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions of this Ordinance shall not in any way be impaired or affected thereby and shall remain in full force and effect.

**CHAPTER TEN**  
**EFFECTIVE DATE; AMENDMENT**

**SECTION:**

**10.1** This Ordinance shall take effect upon its adoption by the General Council and approval by the Secretary of the Interior.

**10.2** This Ordinance may be amended or repealed by a vote of two-thirds (2/3) of the members of the General Council present and voting 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.

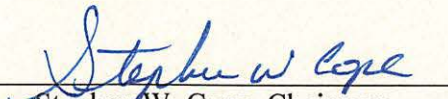
This Ordinance may be amended by the Business Committee as provided for under the Tribe's Constitution and By-Laws for the purpose of clarifying language or to be in immediate compliance with changes in federal law that effect this Ordinance.

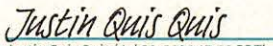
BUSINESS SITE LEASING ORDINANCE  
July 14, 2020

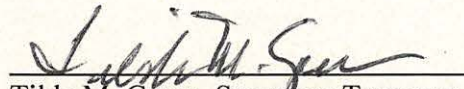
Such amendments will be brought before the General Council at the next regular meeting for ratification.

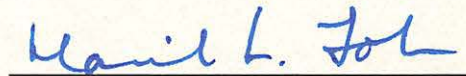
**CERTIFICATION**

The foregoing resolution was duly adopted at a meeting of the San Pasqual Business Committee held on July 28, 2020, a quorum being present, by a majority vote of 4 "for", 0 "against", 1 "abstaining", and said Resolution has not been rescinded or amended in any way.

  
Stephen W. Cope, Chairman

  
Justin Quis Quis (Jul 28, 2020 17:36 PDT)  
Justin Quis Quis, Vice-Chairman

  
Tilda M. Green, Secretary-Treasurer

  
David L. Toler, Councilman

  
Joe Chavez (Jul 29, 2020 10:20 PDT)  
Joe Chavez, Councilman