



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

**APPROVAL OF**

**SANTA YNEZ BAND OF CHUMASH MISSION  
INDIANS  
LEASING ORDINANCE**

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The attached Business and Residential Leasing Ordinance, submitted by the Santa Ynez Band of Chumash Mission Indians (listed in the Federal Register, Vol. 85, No. 20 FR 5465 (January 6, 2020) as the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California) and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 21 pages and adopted by the Santa Ynez Business Committee on April 22, 2020, is hereby approved.

Dated:           OCT - 9 2020          

  
Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



# Santa Ynez Band of Mission Indians

## ORDINANCE NO. 20 LEASING ORDINANCE (Hearth Act)

### Table of Contents

Section 1.0	Purpose and Intent.....	2
Section 1.1	Authority.....	2
Section 1.2	Definitions.....	2
Section 1.3	Business Lease Requirements .....	5
Section 1.4	Business Lease Management.....	12
Section 1.5	Residential Lease Requirements.....	13
Section 1.6	Approval of Sublease and Assignment; Requirements; and Recordings .....	17
Section 1.7	Approval of Leasehold Mortgage; Requirements; and Recordings.....	18
Section 1.8	Residential Lease Management .....	18
Section 1.9	Complaint; Form of Complaint; Informal Resolution; Decision; and Appeal. ....	19
Section 1.10	Enforcement of Business and Residential Leases .....	19
Section 1.11	Appeals.....	21
Section 1.12	Environmental Review Process for Business and Residential Leases.....	22
Section 1.13	Sovereign Immunity.....	25
Section 1.14	Effective Date .....	25
Section 1.15	Severability .....	25
Section 1.16	Amendments.....	25

## **§1.0 PURPOSE AND INTENT**

The Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation also known as the Santa Ynez Band of Mission Indians and referred to herein as “Tribe,” is a sovereign Indian tribal government. The purpose of these Regulations is to implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. §415, as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, Pub. L. 112-151, 126 Stat., 1160 (2012), codified at 25 U.S.C. 415(h)(HEARTH Act), for business and residential leases on Tribal Trust Land within the Santa Ynez Reservation and any lands that may become Tribal Trust Lands within and beyond the exterior boundaries of the Santa Ynez Reservation in the future. In addition, these Regulations are intended to promote political self-determination, encourage economic self-sufficiency, and increase business activity and employment on Tribal Trust Land.

## **§1.1 AUTHORITY**

These Regulations are authorized by and subject to the HEARTH Act and Article VIII, Section 1, C of the Articles of Organization of the Tribe.

## **§1.2 DEFINITIONS**

- (a) “Assignment” means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a Lease.
- (b) “Best Interest of the Tribe” means the balancing of interests to attain the highest economic income, promote economic development, preserve and enhance Tribal Trust Land, increase employment and revenue for the Tribe, and preserve the sovereignty of the Tribe.
- (c) “BIA” means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior.
- (d) “Business Committee” means the Tribe’s Business Council consisting of a Chairman, a Vice Chairman, a Secretary-Treasurer and two adult members of the Tribe who are duly elected to govern the day-to-day activities of the Tribe and such other delegated powers pursuant to Article 4, Section 1 and 2 of the Tribe’s Articles of Organization.
- (e) “Cancellation” means Tribal Administrator or BIA action to end or terminate a Lease.
- (f) “Development Period” means the time period between execution of the Lease to substantial completion of improvements on the Lease Premises.
- (g) “Environmental Review Process” means the procedures for determining the Significant Environmental Effects of a Project as defined under these Regulations.
- (h) “Environmental Reviewer” means the person or tribal office designated by the Business Committee to manage and review the Environmental Review Process.

- (i) "Executing Official" means a member of the Business Committee, or its designee, who is authorized pursuant to these Regulations to take all necessary action on Leases or Subleases, including approval, execution, amendments and assignments of a Lease.
- (j) "Fair Annual Lease Value" means the most probable dollar amount a land lease should bring in a competitive market reflecting all conditions and restrictions of the Lease terms, including duration, rental adjustments, use restrictions, expense obligations or other considerations that drive commercial viability of proposed Project or development of land where both the Lessor and Lessee are equally motivated to consummate the Lease under the particular market conditions applicable to the transaction.
- (k) "Holdover" means circumstances in which a Lessee remains in possession of the Lease Premises after the Lease term expires or has been cancelled.
- (l) "Lease" means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Indian land, for a specified purpose and duration. The Lessee's right to possess will limit the Indian landowners' right to possess the Leased Premises only to the extent provided in the Lease.
- (m) "Lease Decision" means the decision of the Business Committee following completion of the Environmental Review Process with respect to approval of the issuance, amendment, sublease or assignment of a Lease.
- (n) "Lease Premises" means the Tribal Trust Land that is subject to a Lease approved by the Tribe pursuant to these Regulations.
- (o) "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.
- (p) "Lessee" means person or entity who has acquired a legal right to possess Indian land by a Lease authorized by these Regulations.
- (q) "Lessor" means the Tribe who, as the owner of Tribal Trust Land, conveys possessory interest in Tribal Trust Land that is subject to a Lease authorized by these Regulations.
- (r) "LTRO" means Land Titles and Records Office of the BIA.
- (s) "Mortgage" means the holder of a Leasehold Mortgage.
- (t) "Permanent Improvements" means buildings, other structures, and associated infrastructure attached to the Premises.
- (u) "Premises" means any portion of Tribal Trust Land, as described in any Lease, any Permanent Improvements and any common areas and ground appurtenant thereto.
- (v) "Project" means any activities contemplated under a Lease.

- (w) "Public," for purposes of the Environmental Review Process, means Tribal Citizens, Tribal Departments, residents within the Reservation, and owners of real property contiguous to Tribal Trust Land which is the subject of a Lease and who are directly affected by such Lease.
- (x) "Significant Environmental Effects" means a substantial adverse change in the environment, including land, air, water, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (y) "Space Lease" means a lease of space within an existing facility or building on Tribal Trust Land.
- (z) "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 the Lease.
- (aa) "Sublessee" means a third party who receives a Sublease from a Lessee.
- (bb) "Tribal Administration" means the governmental administrative offices and departments of the Tribe responsible for managing programs and services on behalf of the Tribe within the Santa Ynez Reservation.
- (cc) "Tribal Administrator" means official of the Tribal Administration responsible for implementation of these Regulations on the Tribe's behalf and includes a person designated by the Tribal Administrator to carry out his or her duties.
- (dd) "Tribal Trust Land" means any tract in which the surface estate is owned by the Tribe in trust or restricted status and over which the Tribe exercises governmental power. Tribal Trust Land in the context of these Regulations does not include individually owned Indian owned allotted lands.
- (ee) "Tribe" means the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, and the agencies, entities, arms and enterprises of the Tribe, including any corporations formed under 25 U.S.C. §5112.
- (ff) "Tribal Law" means the body of law established by the Tribe that governs lands and activities under the jurisdiction of the Tribe, including ordinances or other enactments by the Tribe, and tribal court rulings.
- (gg) "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.

### **§1.3 BUSINESS LEASE REQUIREMENTS**

- (a) **Terms and Conditions.** Any Lease authorized by these Regulations shall be governed by the terms and conditions set forth in the Lease. The terms of the Lease may be amended by written approval of the Lessee and the Business Committee or its designee. The Lessee is responsible for understanding the terms and conditions set forth therein.

**(b) Duration and Renewal for Business Leases.** Unless otherwise expressly provided in the Lease, no Lease shall be approved more than twelve (12) months prior to the first day of the Lease term.

a. The Lease term shall not be more than twenty-five (25) years except that a Lease may include an option to renew for two (2) additional terms, provided that each term of which shall not exceed twenty-five (25) years. Unless otherwise expressly provided in the Lease, the Lessee shall notify the Business Committee or its designee of the intent to renew not less than one (1) year prior to the expiration date set forth therein.

**(c) Obtaining a Business Lease.** Information to obtain a Business Lease shall be available from the Tribal Administration office.

**(1)** Any applicant for a Business Lease must submit the following documents to the Tribal Administrator:

**(A)** Financial statements and related banking references for the Tribe to reasonably determine prospective Lessee's credit history and ability to perform under the Lease;

**(B)** Site survey and legal description, if applicable;

**(C)** Environmental Review Process documents; and

**(D)** Any other documents deemed necessary by the Tribal Administrator pursuant to the Tribe's Business Lease procedures.

**(2)** A Business Lease shall contain the following provisions:

**(A)** The tract, location or parcel of Tribal Trust Land subject to the Lease with a legal description sufficient to meet LTRO requirements.

**(B)** The purpose and authorized use of the Tribal Trust Land subject to the Lease.

**(C)** The parties to the Lease and address/contact information for the parties.

**(D)** The Lease effective date, term and provisions for renewal, if any.

**(E)** Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises, including restoration or reclamation of the leased premises upon expiration, termination, or cancellation of the Lease if applicable.

**(F)** Indemnification of the United States and Lessor for the Lessee's use and occupancy of the Tribal Trust Land subject to the Lease.

**(G)** Payment and late payment requirements, including the party to receive the rent, acceptable forms of payment, due date for payment, late payments penalty(ies) and interest.

- (H) Due diligence, insurance and bonding requirements. If a performance bond is required pursuant to Section 1.3(j) of these Regulations, the lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.
  - (I) A provision that expressly includes the following language: "If the Lease 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."
  - (J) Removal and restoration plan requirements applicable to the Lease Premises at expiration or cancellation of the Lease.
  - (K) Timelines, if any, for Lease approval, requirements for Business Committee approval and the Executing Official authorized to execute the Lease.
  - (L) The requirements for Business Committee approval of any amendments, assignments, subleases and Leasehold Mortgages, and the Executing Official authorized to execute any amendments, assignments, Subleases and Leasehold Mortgages during the Lease term.
  - (M) Tribal Historic Preservation Office Certification when a lease includes ground disturbance for construction purposes.
- (3) All Leases and amendments thereto shall be recorded with the Tribal Administrator and will also be recorded with the Bureau of Indian Affairs Land Titles and Records Office ("LTRO") with jurisdiction over the Tribal Trust Land, and any leasehold mortgage, to the extent required by a Mortgagee, shall also be recorded with the Tribal Administrator and will also be recorded with the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribal Trust Land. Timing of recordation by LTRO shall not affect the initiation or validity of such document.
  - (4) The Tribal Administrator is responsible for maintaining all records of any Business Lease with original execution documents to be maintained by the Tribal Administration.
  - (5) The Tribal Administrator shall cause copies of these Regulations and any Business Lease, amendments, renewals or cancellations to be sent to the BIA Superintendent, Southern California Agency.
  - (6) Records of activities taken pursuant to these Regulations are the property of the Tribe. Records compiled, developed or received by the Secretary are the property of the Secretary.
- (d) **Space Leases.** Space Leases shall be reviewed and approved pursuant to these Regulations.

(e) **Land Descriptions.** A Business Lease shall contain site surveys and legal descriptions based on metes and bounds, rectangular lot and block systems and/or be of sufficient detail to meet recording requirements for the LTRO having jurisdiction of the Tribal Trust Land subject to the Lease. A Space Lease shall contain accurate descriptions of square footage and may include renderings, drawings or other schematics to illustrate the location of the physical space to a specific location upon a tract of land subject to the Lease.

(f) **Appraisals; Local Studies.**

(1) The Fair Annual Lease Value shall be determined either by appraisal, performed by a licensed appraiser pursuant to the Uniform Standards of Professional Appraisal Practice or equivalent procedure, or performed by the Tribal Administrator utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by any similar methodology approved by the Tribal Administrator and deemed to be in the Best Interest of the Tribe. A written appraisal log describing the methods of appraisal and value of Tribal Trust Land shall be maintained in the Lease file.

(g) **Fair Annual Lease Value**

(1) No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal log maintained in the Lease file, except:

(A) Where improvements to Tribal Trust Land which will be subject to the Lease are in the pre-Development Period, e.g., design, permitting and financing;

(B) When the Tribe is attempting to attract business development through market incentives; or

(C) Where the Business Committee determines the Lease is in the Best Interest of the Tribe.

(2) A Lease may be structured as a flat lease rate.

(3) A Lease may be structured as a flat lease rate plus a percentage of gross receipts, provided that the Lessee generates over \$500,000.00 annually in gross receipts.

(4) A Lease may be structured on a market indicator.

(5) A Lease must specify the date payments are due and that payments shall be made directly to the Tribe unless otherwise specified in the Lease.

(6) Unless provided in the Lease, payments may not be made or accepted more than eighteen (18) months in advance of the due date.

(7) A Lease may provide for periodic review and such review may give consideration to prevailing market conditions, exclusive of the improvements or development required by the Lease or the contribution value of such improvements.



- (8) A Lease may be structured to allow for payment adjustments, provided that the Lease specifies the terms and procedures for adjustments and the terms and conditions of dispute resolution.
  - (9) A Lease may be amended to allow for payment rate adjustments.
  - (10) The Tribal Administrator shall keep written records of the basis to determine Fair Annual Lease Value, or any adjustment thereof. The records shall be presented to the Lessee and included in the Lease file.
- (h) **Environmental Review Process.** Subject to Section 1.12(a), the Business Committee or its designee shall not approve a Business Lease until completion of the Environmental Review Process pursuant to Section 1.12. Any Lease approved and executed by the Business Committee or its designee in violation of these Regulations shall be null and void.
- (i) **Insurance.**
- (1) A Lessee shall provide insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable improvements on the Lease Premises.
  - (2) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.
  - (3) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.
  - (4) The Business Committee or its designee may waive the insurance requirement(s) if the waiver is deemed to be in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.
- (j) **Performance Bond.**
- (1) Unless waived in writing by the Tribe pursuant to this Section 1.3(j)(2) of these Regulations, the Lessee shall obtain a performance bond in an amount sufficient to secure performance of the obligations of the Lessee pursuant to the Lease. The bond may guarantee:
    - (A) Annual Lease payments;
    - (B) Estimated development costs of the improvements; and
    - (C) Any additional amounts necessary to ensure compliance with the Lease.
  - (2) The Business Committee may waive the bond requirement, or reduce the amount, provided that the waiver or reduction is deemed to be in the Best Interest of the Tribe. Any waiver pursuant to this Section 1.3(j)(2) shall be in writing and maintained with

the Lease file. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

- (3) The performance bond may be in one of the following forms:
  - (A) A certificate of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (B) An irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States; or
  - (C) Negotiable Treasury securities or surety bond issued by a company approved by the United States Department of the Treasury.

**(k) Improvements.** All Leases shall require the Lessees to exercise due diligence and best efforts to complete pre-development and construction of improvements within the schedule specified in the Lease.

- (1) Lessee, at its expense or as otherwise provided in the Lease, may construct improvements on the Lease Premises if the Lease provides for:
  - (A) Site development and construction of improvements to be erected thereon, and
  - (B) A development schedule, including dates for the commencement and completion of construction.
- (2) The Lessee shall provide the Lessor written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
- (3) When requested by the Lessor or otherwise required in the Lease, Lessee shall further provide the Lessor, in writing, an updated schedule for construction.
- (4) Failure of the Lessee to comply with this subsection (k) will be deemed a violation of the Lease and may lead to cancellation of the Lease pursuant to Section 1.10(c) of these Regulations.
- (5) Improvements to the Lease Premises shall become the property of the Lessor unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.
- (6) A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Lessor shall have a right of first refusal to purchase the Lessee's interest in the Lease unless the terms of the Lease provide otherwise.
- (7) The Lease may provide that at expiration or cancellation of the Lease, the Lessor shall purchase improvements to the Lease Premises at fair market value.

(8) Improvements may be subject to taxation by the Tribe.

**(l) Subleases, Assignments, Amendments and Leasehold Mortgages.**

(1) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor or Lessee, unless otherwise provided herein.

(2) The effective date, term and provision for renewal, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.

(3) The Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, provided that a copy of the Sublease or Assignment is provided to the Lessor and the following conditions, where applicable, are satisfied and stated in the Lease:

(A) There is no event of default under the Lease or these Regulations;

(B) Any restrictions and use limitations on the use of the Lease Premises shall continue to apply to any Sublessee or Assignee;

(C) The proposed Assignee or Sublessee submits a current financial statement showing financial capacity to perform the Lease obligations; and

(D) The Lessee shall not be relieved or released from any of its obligations under the Lease.

(E) This Section 1.3(l) in no way releases the duties or obligations of the parties under the Lease, which may contain additional restrictions and conditions.

(4) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and improvements to the Lease Premises subject to the approval of the Lessor.

(5) If a sale or foreclosure of the Lessee's business or assets occurs and the person with a legal right or interest in the property ("Mortgagee") is also the purchaser, the Mortgagee may assign the Lease without approval of the Lessor or Lessee, 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 Mortgagee, approval by the Lessor is required, provided that the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

**(m) Lease Approval.** Any Lease authorized by these Regulations shall be approved by the Business Committee or its designee.

**§ 1.4 BUSINESS LEASE MANAGEMENT**

**(a) Management.**

- (1) Except where required otherwise by agreement or applicable law, the Lessor shall manage all Leases pursuant to these Regulations.
  - (2) The Tribe shall employ generally accepted real estate management practices for the administration of the Lease.
- (b) **Administrative Fees.** The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction permitted pursuant to these Regulations.

### **§ 1.5 RESIDENTIAL LEASE REQUIREMENTS**

- (a) **Terms and Conditions.** Any Lease authorized by these Regulations shall be governed by the terms and conditions set forth in the Lease. The terms of the Lease may be amended by written approval of the Lessee and the Business Committee or its designee. The Lessee is responsible for understanding the terms and conditions set forth therein.
- (b) **Applicability.**
- (1) These Regulations shall apply:
    - (A) To all future Leases providing for the occupation or use of any housing unit for residential use; and
    - (B) To all future Leases providing for the occupation or use of any Tribal Trust Land for residential use.
  - (c) **Duration and Renewal for Residential Leases.** Unless otherwise expressly provided in the Lease, no Lease shall be approved more than twelve (12) months prior to the first day of the Lease term.

The maximum term of a lease approved under these Regulations may not exceed 75 years. The Lease may provide for an initial term of less than 75 years with a provision for one or more renewals, so long as the maximum term, including all renewals, does not exceed 75 years. Unless the Lease provides otherwise, a holdover does not extend a Residential Lease.

- (d) **Approval of Lease.**
- (1) All Leases shall be subject to the approval of the Business Committee or its designee in accordance with Tribal Law and these Regulations.
  - (2) All Leases shall be signed on behalf of the Tribe by the Executing Official, or in his or her absence, a member of the Business Committee or its designee.
  - (3) All Leases which are approved and executed under this Section 1.5 shall be effective without federal approval unless the Secretary of the Interior rescinds approval of this Act and reassumes responsibility for such approval.

- (4) Any Lease which is approved and executed under this Section 1.5 shall refer to these Regulations as authority for its execution on behalf of the Tribe.

**(e) Residential Lease Requirements.**

- (1) A Residential Lease shall contain the following provisions:
- (A) The tract, location or parcel of Tribal Trust Land subject to the Lease with a legal description sufficient to meet LTRO requirements;
  - (B) The purpose and authorized use of the Tribal Trust Land subject to the Lease;
  - (C) The parties to the Lease and address/contact information for the parties;
  - (D) The Lease effective date, term and provisions for renewal, if any;
  - (E) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the leased premises, including restoration or reclamation of the leased premises upon expiration, termination, or cancellation of the Lease if applicable;
  - (F) Indemnification of the United States and Lessor for the Lessee's use and occupancy of the Tribal Trust Land subject to the Lease;
  - (G) Payment and late payment requirements, including the party to receive the rent, acceptable forms of payment, due date for payment, late payments penalty(ies) and interest;
  - (H) A provision that expressly includes the following language: "If the Lease 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."
  - (I) Removal and restoration plan requirements applicable to the Lease Premises at expiration or cancellation of the Lease;
  - (J) Timelines, if any, for Lease approval, requirements for Business Committee approval and the Executing Official authorized to execute the Lease;
  - (K) The requirements for Business Committee approval of any amendments, assignments, subleases and Leasehold Mortgages, and the Executing Official authorized to execute any amendments, assignments, Subleases and Leasehold Mortgages during the Lease term;
  - (L) Tribal Historic Preservation Office Certification when a Lease includes ground disturbance for construction purposes;

- (M) A provision stating that approval and enforcement of the Lease is governed by these Regulations and applicable Tribal law and federal law.
- (f) **Payment.** For any Lease of Tribal Trust Land requiring payments to be made to the Tribe, the Tribe shall provide the Secretary of the Interior with such documentation of the lease payments as the Secretary of the Interior may request to enable the Secretary of the Interior to discharge the trust responsibility of the United States with respect to the Premises.
- (g) **Recording.**
- (1) All Leases and amendments thereto shall be recorded with the Tribal Administrator and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribal Trust Land, and any leasehold mortgage, to the extent required by a Mortgagee, shall also be recorded with the Tribal Administrator and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribal Trust Land.
  - (2) The Tribal Administrator is responsible for maintaining all records of any Residential Lease with original execution documents to be maintained by the Tribal Administration.
  - (3) The Tribal Administrator shall cause copies of these Regulations and any Residential Lease, amendments, renewals or cancellations to be sent to the BIA Superintendent, Southern California Agency.
  - (4) Records of activities taken pursuant to these Regulations are the property of the Tribe. Records compiled, developed or received by the Secretary are the property of the Secretary.
- (h) **Environmental Review Process.** Subject to Section 1.12(a), the Business Committee or its designee shall not approve a Residential Lease until completion of the Environmental Review Process pursuant to Section 1.12. Any Lease approved and executed by the Business Committee or its designee in violation of these Regulations shall be null and void.
- (k) **Improvements.** All Leases shall require the Lessees to exercise due diligence and best efforts to complete pre-development and construction of improvements within the schedule specified in the Lease.
- (1) Lessee, at its expense or as otherwise provided in the Lease, may construct improvements on the Lease Premises if the Lease provides for:
    - (A) Site development and construction of improvements to be erected thereon, and
    - (B) A development schedule, including dates for the commencement and completion of construction.
  - (2) The Lessee shall provide the Lessor written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

- (3) When requested by the Lessor or otherwise required in the Lease, Lessee shall further provide the Lessor, in writing, an updated schedule for construction.
- (4) Improvements to the Lease Premises shall become the property of the Lessor unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.
- (5) A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Lessor shall have a right of first refusal to purchase the Lessee's interest in the Lease unless the terms of the Lease provide otherwise.
- (6) The Lease may provide that at expiration or cancellation of the Lease, the Lessor shall purchase improvements to the Lease Premises at fair market value.
- (7) Improvements may be subject to taxation by the Tribe.

#### **§ 1.6 Approval of Sublease and Assignment; Requirements; and Recordings**

##### **(a) Approval of Sublease and Assignment.**

- (1) All Subleases and Assignments, other than to a Mortgagee, or the Designated Assignee, shall be subject to the approval of the Business Committee or its designee in a manner consistent with Tribal Law and these Regulations.
- (2) All Subleases and Assignments which are subject to the approval of the Business Committee shall be signed on behalf of the Tribe in the same manner as the original Lease.
- (3) All Subleases and Assignments which are approved and executed under this Section 1.6 shall be effective without federal approval unless the Secretary of the Interior rescinds approval of this Act and reassumes responsibility for such approval.
- (4) All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety agreement.

##### **(b) Requirements.**

- (1) A Lessee may sublease a Housing Unit or Tribal Trust Land in accordance with Section 1.6 of these Regulations.
- (2) A Lessee may assign a Lease in accordance with Section 1.6 of these Regulations.
- (3) No Sublease shall relieve the Lessee or sublessor of any liability under the Lease.
- (4) In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the Lease, and that the Lease is subject to these Regulations.

- (c) **Recording.** All Subleases and Assignments and amendments thereto shall be recorded with the Tribal Administrator and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribal Trust Land and filed in the Tribal Administrative Offices.

### **§ 1.7 APPROVAL OF LEASEHOLD MORTGAGE; REQUIREMENTS; AND RECORDING**

- (a) **Approval of Leasehold Mortgage.**

- (1) All Leasehold Mortgages under a Lease must be separately authorized by the Business Committee or its designee, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.
- (2) All Leasehold Mortgages which are authorized under this Section 1.7 shall be effective without federal approval unless the Secretary of the Interior rescinds approval of this Act and reassumes responsibility for such approval.

- (b) **Requirements.** A Lessee may grant a Leasehold Mortgage under Lease in accordance with Section 1.7 of these Regulations.

- (c) **Recording.** All Leasehold Mortgages and assignments, amendments and sales relating thereto shall be recorded with the Tribal Administrator and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribal Trust Land, provided that, to the extent required by the Mortgagee, a Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

### **§ 1.8 RESIDENTIAL LEASE MANAGEMENT**

- (a) **Management**

- (1) Except where required otherwise by agreement or applicable law, the Lessor shall manage all Leases pursuant to these Regulations.
- (2) The Tribe shall employ generally accepted real estate management practices for administration of the Lease.

- (b) **Administrative Fees.** The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction permitted pursuant to these Regulations.

### **§ 1.9 COMPLAINT; FORM OF COMPLAINT; INFORMAL RESOLUTION; DECISION; APPEAL**

- (a) **Complaint.** An Interested Party who has reasonable grounds to believe that the Tribe has failed to comply with these Regulations has the right to file a complaint under this Section.
- (b) **Form of Complaint.** The complaint shall be in writing, signed by the Interested Party, describe the alleged noncompliance with these Regulations which is the subject of the



complaint, state all relief requested and be addressed to the Tribal Chairman on behalf of the Business Committee.

- (c) **Informal Resolution.** The Business Committee shall make reasonable efforts to resolve the complaint informally, including but not limited to, attempting to schedule a meeting with the Interested Party for such purpose. All complaints which are resolved through such informal resolution shall be reduced to writing and signed by the Tribal Chairman on behalf of the Business Committee and the Interested Party.
- (d) **Decision.** If a complaint is not resolved informally, the Business Committee shall issue a decision on the complaint, which shall be in writing, signed by the Tribal Chairman. The Tribal Chairman or his delegate shall cause the decision to be delivered to the Interested Party no later than twenty (20) business days after receipt of the complaint. The decision of the Business Committee shall constitute a final decision of the Tribe.
- (e) **Appeal.** An Interested Party who has exhausted the Tribal remedies set forth in this Section 1.9, may submit a petition to the Secretary of the Interior, at such time and in such form as the Secretary of the Interior deems appropriate, to review the Tribe's compliance with these Regulations.

#### **§ 1.10 ENFORCEMENT OF BUSINESS AND RESIDENTIAL LEASES**

- (a) **Generally.** The Tribe shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with these Regulations. This includes the power to enter the Lease Premises at a reasonable time, with or without notice and assess late payment penalties.
- (b) **Defaults.**
  - (1) If the Tribal Administrator determines the Lessee is in default, the Tribal Administrator shall send the Lessee a notice of default within five (5) Business Days of the determination. The notice of default may be provided by certified mail, return receipt requested.
  - (2) Within ten (10) days of the receipt of mailing, the Lessee shall:
    - (A) Cure the default and notify the Tribal Administrator in writing that the default has been cured; or
    - (B) Dispute the Tribal Administrator's determination that the Lease is in default and explain why the Lease should not be canceled; or
    - (C) Request additional time to cure the default.
- (c) **Remedies.**
  - (1) If the Lessee fails to cure the default within the proscribed period, the Tribal Administrator may:

- (A) Cancel the Lease pursuant to these Regulations;
  - (B) Grant an extension of time to cure the default;
  - (C) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
  - (D) Any combination of remedies listed above; or
  - (E) Any other remedy set forth in the Lease.
- (2) If the Tribal Administrator cancels a Lease, the Tribal Administrator shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
- (A) Explain the grounds for Lease cancellation;
  - (B) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
  - (C) Notify the Lessee of its right to appeal; and
  - (D) Order the Lessee to vacate the Lease Premises within thirty (30) days after receipt of the cancellation letter, if an appeal pursuant to Section 1.11 is not filed by that time.
- (3) A cancellation shall become effective thirty-one (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.
- (4) If the Tribal 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 a reasonable time period.
- (d) **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 Tribe, and the failure to pay such amount shall be treated as a breach of the Lease.
- (e) **Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the Lease Premises, or undertakes criminal activity thereon, the Tribe may take appropriate emergency action.
- (f) **Holdover.** If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribe may treat such occupation as a trespass. If the holdover is treated as a trespass, the Tribe shall take action to recover possession and pursue additional remedies. Filing

shall be pursuant to all applicable Tribal laws, or alternatively, the Tribe may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

- (g) **Trespass.** If a person occupies the Lease Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal law.
- (h) **BIA Enforcement.** The BIA may, upon reasonable notice from the Tribe and at the BIA's discretion, enforce the provisions of, or cancel, a Lease.

### **§ 1.11 APPEALS**

- (a) **Appeals.** The Lessee or interested party may appeal any determination of the Tribal Administrator made pursuant to these Regulations, within ten (10) days of the determination. Appeals may be filed with the Business Committee or other designated hearing body as set forth in the Lease. Such appeals shall be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.
- (b) **Scope of Review.** The Business Committee or other designated hearing body shall review whether the Tribal Administrator's determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with applicable law. The decision of the Business Committee or other designated hearing body shall be final.

### **§ 1.12 ENVIRONMENTAL REVIEW PROCESS FOR BUSINESS AND RESIDENTIAL LEASES**

- (a) **Generally.** Unless exempt under this Section 1.12, the Business Committee shall not approve a Business or Residential Lease until the proponent of the Lease has completed the Environmental Review Process pursuant to this Section 1.12 and applicable Tribal Law. Leases approved and executed without compliance with this Section 1.12 shall be null and void.
- (b) **Threshold Determination.**
  - (1) **Lease Not Subject to Environmental Review Process:** if the Environmental Reviewer determines that the action, development, project, or use approved by the Lease Decision would not: i) impact, ii) alter, or iii) otherwise cause Significant Environmental Effects, the Lease Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal Law.
  - (2) **Lease Subject to Environmental Review Process:** if the Environmental Reviewer determines that the action, development, project, or use approved by the Lease Decision might be expected to: i) impact, ii) alter, or iii) otherwise cause Significant

Environmental Effects, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the Project.

- (3) **Statutory Exemption for Certain Leases:** leasing decisions involving a Business or Residential Lease proposing the use of premises that are the subject of a completed National Environmental Policy Act ("NEPA") process under federal law shall be exempt from the Environmental Review Process.

(c) **Action on Lease Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Lease Decision is subject to the Environmental Review Process, the Business Committee may not consider the Lease Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this Regulation.

(d) **Environmental Review Process.**

- (1) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Lease, the Business Committee shall cause preparation of a comprehensive and adequate tribal environmental impact report ("TEIR") analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further, that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Project's Significant Environmental Effect(s) which the Lease approval is likely to result in, and shall include a detailed statement setting forth all of the following:

(A) A description of the physical environmental conditions in the vicinity of the development Project (the environmental setting and existing baseline conditions), as they exist at the commencement of the TEIR;

(B) All Significant Environmental Effect(s) of the proposed Lease;

(C) In a separate section:

(i) Any Significant Environmental Effect(s) that cannot be avoided if the Lease is executed; and

(ii) Any Significant Environmental Effect(s) that would be irreversible if the Lease is executed.

(iii) Any mitigation measures proposed, recommended, or required for any Significant Environmental Effect(s).

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

**(e) Notice of Completion of Draft TEIR.**

- (1) Within no less than thirty (30) days following the completion of the draft TEIR, the Environmental Reviewer shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Environmental Reviewer shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
  - (A) A brief description of the Premises or Project;
  - (B) The proposed location of the Premises or Project;
  - (C) An address where copies of the draft are available; and
  - (D) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- (2) To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. §415, the Tribe will provide public notice by at least one (1) of the procedures specified below:
  - (A) Publication of the draft TEIR in a newspaper of general circulation in the area affected by the proposed Business or Residential Lease, with notice to the public of the opportunity to comment on any Significant Environmental Effect(s) of proposed action.
  - (B) Posting of the draft TEIR in the offices of the Tribe and the Environmental Reviewer's office with notice to the public of the opportunity to comment on any Significant Environmental Effect(s) of the proposed action.

- (f) Response to Public Comments.** After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the public.

In accordance with Section 1.12(e)(2) of these Regulations and prior to the approval and execution of the Business or Residential Lease, the Environmental Reviewer will provide responses to relevant and substantive public comments on any Significant Environmental Effect(s) arising as a result of the proposed Project and proposed or recommended mitigation measures addressing any such impacts. Notice of the availability of all responses of the Environmental Reviewer will be published in a newspaper of general circulation in the area affected by the Business or Residential Lease and posted in the offices of the Tribe and the Environmental Reviewer's office.

**§ 1.13 SOVEREIGN IMMUNITY**

All inherent sovereign rights of the Tribe, as a federally recognized Indian tribe with respect to provisions authorized in these Regulations are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in these Regulations shall be deemed or construed to be a waiver of the Tribe's sovereign immunity from unconsented suit.

**§ 1.14 EFFECTIVE DATE**

These Regulations shall take effect upon their adoption by the Business Committee and approval by the Secretary of the Interior.

**§ 1.15 SEVERABILITY**

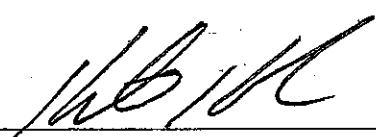
If any provision of these Regulations shall be held unconstitutional or invalid, only the invalid provision or language shall be severed and the remaining provision and language of these Regulations shall remain in full force and effect.

**§ 1.16 AMENDMENTS**

These Regulations may be amended by a majority vote of the Business Committee at a duly called Business Committee meeting at which a quorum is present. All substantive amendments to these Regulations must be submitted to and approved by the Secretary of the Interior.

**CERTIFICATION**

This is to certify that the foregoing HEARTH ACT REGULATIONS were adopted by the Santa Ynez Business Committee at a duly called meeting of the Tribal Business Committee on April 22, 2020 by a vote of 4 in FAVOR, 0 OPPOSED, and 0 ABSTAINING.



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Kenneth Kahn, Chairman