



**TRIBAL COUNCIL RESOLUTION NO. 2021-03  
AUTHORIZING THE ADOPTION OF TITLE XVI  
PUEBLO OF JEMEZ TRIBAL LEASING CODE  
AS MODIFIED**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez on the 12th of March, 2021, the following resolution was adopted:

**WHEREAS**, the Pueblo of Jemez is a federally recognized sovereign tribal government with a Governor and Tribal Council empowered to exercise all governmental powers, fiscal authority and tribal sovereignty; and

**WHEREAS**, the Pueblo of Jemez desires to enact a Tribal Leasing Code as provided under the Helping Expedite and Advance Responsible Tribal Homeownership Act (Hearth Act of 2012), amending 25 U.S.C. § 415, to authorize, regulate, and streamline the leasing and review process for agricultural, business, educational, public, religious, recreational, solar resource, and wind resource leases on Pueblo of Jemez Lands; and,

**WHEREAS**, the Pueblo of Jemez through Tribal Council Resolution No. 2017-22 and through Resolution No. 2018-20 amending the Tribal Leasing Code, authorized the submission of the Tribal Leasing Code to the Office of Trust Services – Division of Real Estate Services for review and approval in accordance with the procedures set forth in the HEARTH Act; and

**WHEREAS**, the Bureau of Indian Affairs, Office of Trust Services – Division of Real Estate Services reviewed the provisions of the Pueblo of Jemez Tribal Leasing Code and made certain recommended revisions to the Pueblo's Tribal Leasing Code and those revisions have been discussed with the Pueblo's representatives and the agreed upon revisions made to the Tribal Leasing Code; and

**WHEREAS**, the revisions to the Pueblo of Jemez Tribal Leasing Code have been explained and presented to the Tribal Council for consideration and approval and the Tribal Council approves the revisions therein and is satisfied that the Pueblo of Jemez Tribal Leasing Code *as modified* still meets the needs of the Pueblo to regulate leasing on Pueblo Lands.

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***Office of the Governor***

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**NOW THEREFORE BE IT RESOLVED THAT** the Pueblo of Jemez Tribal Council adopts TITLE XVI the Pueblo of Jemez Tribal Leasing Code *as modified* pursuant to its sovereign authority to control and regulate its lands and residences; and

**BE IT FURTHER RESOLVED THAT** the Pueblo of Jemez Tribal Council authorizes the Governor to submit the Pueblo of Jemez Tribal Leasing Code *as modified* to the Office of Trust Services – Division of Real Estate Services, Bureau of Indian Affairs for final approval in accordance with the procedures set forth in the HEARTH Act: and

**BE IT FURTHERMORE RESOLVED THAT** the Pueblo of Jemez Tribal Leasing Code *as modified* shall become effective upon approval by the Office of the Assistant Secretary of Indian Affairs or his designee.

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***Office of the Governor***

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**CERTIFICATION**

I, THE UNDERSIGNED, as Governor of Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting which was convened and held on the 12<sup>th</sup> day of March 2021, at Pueblo of Jemez, New Mexico, approved the foregoing resolution that a quorum was present and that 9 voted for and 0 opposed and 0 abstained.

ATTEST:

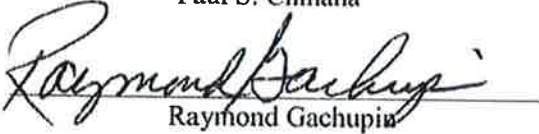
  
2<sup>nd</sup> Lieutenant Governor

  
Michael Toledo, Jr. Governor

**TRIBAL COUNCIL:**

  
Joe Cajero

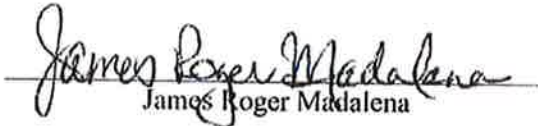
  
Paul S. Chinana

  
Raymond Gachupin


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Frank Loretto

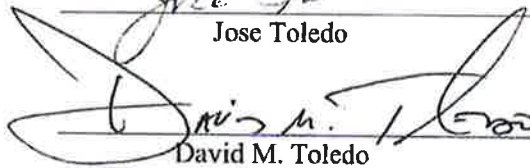
  
J. Leonard Loretto

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Raymond Loretto, DVM

  
James Roger Madalena

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Joshua Magdalena

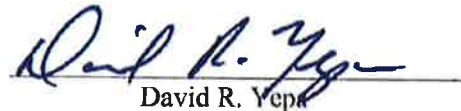
  
Jose Toledo

  
David M. Toledo

  
Paul Tosa

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Joseph A. Toya

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Vincent A. Toya, Sr.

  
David R. Yepa

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**TRIBAL COUNCIL RESOLUTION NO. 2018- 20  
AMENDING TITLE XVI PUEBLO OF JEMEZ TRIBAL LEASING CODE**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez held on the 27<sup>th</sup> day of July 2018, the following resolution was adopted:

**WHEREAS**, the Pueblo of Jemez is a duly recognized sovereign tribal government with a Governor and Tribal Council empowered to exercise all governmental powers, fiscal authority and tribal sovereignty; and

**WHEREAS**, the Pueblo of Jemez enacted the Pueblo of Jemez Tribal Leasing Code, as provided under the Helping Expedite and Advance Tribal Homeownership Act (Hearth Act) of 2012, to authorize, regulate, and streamline the leasing and review process for agricultural, business, educational, public, religious, recreational, solar resource, and wind resource leases on Pueblo of Jemez Lands.

**WHEREAS**, the Pueblo of Jemez Tribal Council enacted the Pueblo of Jemez Tribal Leasing Code via Tribal Council Resolution No. 2017-22 on July 28, 2017; and

**WHEREAS**, after further legal review certain provisions in the Pueblo of Jemez Tribal Leasing Code were in need of clarification and said revisions/amendments have been made to the Leasing Code as shown in Exhibit A; and

**WHEREAS**, the Tribal Council has reviewed the proposed amended provisions of the Pueblo of Jemez Tribal Leasing Code attached hereto as Exhibit A and is satisfied that the proposed amendments are necessary to add clarity to the Leasing Code; and

**NOW THEREFORE BE IT RESOLVED THAT** the proposed amendments to TITLE XVI Pueblo of Jemez Tribal Leasing Code are adopted pursuant to the inherent sovereign authority of the Pueblo of Jemez and Exhibit B attached hereto incorporates the adopted changes to the Pueblo of Jemez Tribal Leasing Code; and

**BE IT FURTHER RESOLVED THAT** Governor is authorized to submit the Pueblo of Jemez Tribal Leasing Code as amended (Exhibit B) to the Office of the Assistant Secretary – Indian Affairs for approval in accordance with the procedures set forth in the HEARTH Act; and

**BE IT FURTHERMORE RESOLVED THAT** the Pueblo of Jemez Tribal Leasing Code and the amendments shall become effective upon approval by the Office of the Assistant Secretary – Indian Affairs or his designee.


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CERTIFICATION

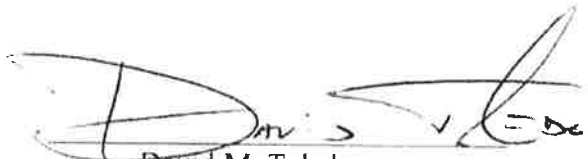
I, THE UNDERSIGNED, as Governor of the Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting, convened on the 27<sup>th</sup> day of July 2018, at the Pueblo of Jemez, New Mexico, approved the foregoing resolution that a quorum was present and that 13 voted for and 0 opposed and 0 abstained.

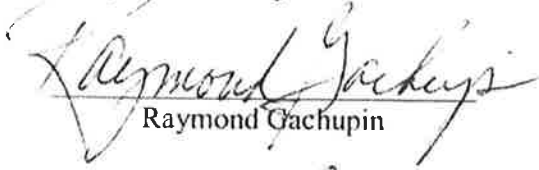
  
Paul S. Chinana, Governor

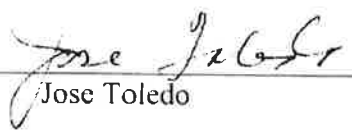
ATTEST:   
1514 Lieutenant Governor

TRIBAL COUNCIL:


  
Joe Cajero

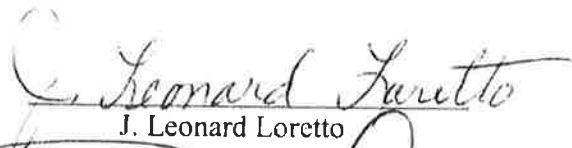
  
David M. Toledo

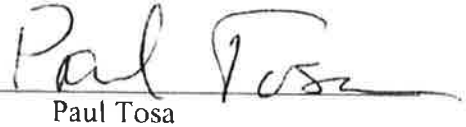
  
Raymond Gachupin

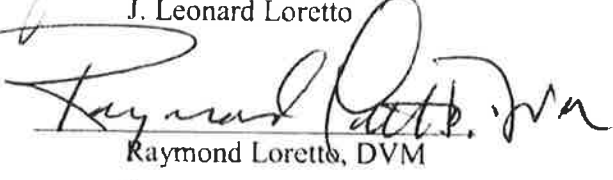
  
Jose Toledo


  
Frank Loretto

  
Michael Toledo, Jr.

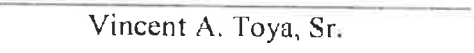
  
J. Leonard Loretto

  
Paul Tosa

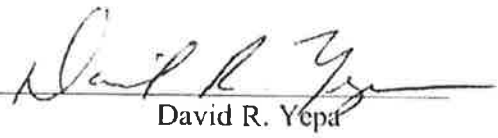
  
Raymond Loretto, DVM

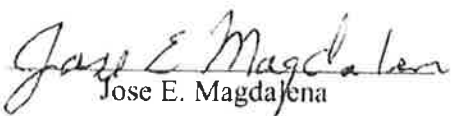
  
Joseph A. Toya

  
James Roger Madalena

  
Vincent A. Toya, Sr.

  
Joshua Madalena

  
David R. Yepa

  
Jose E. Magdalena



**PUEBLO of JEMEZ**

**TRIBAL COUNCIL RESOLUTION NO. 2017-22**

**AUTHORIZING THE ADOPTION OF TITLE XVI  
PUEBLO OF JEMEZ TRIBAL LEASING CODE**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez held on the 28<sup>th</sup> day of July 2017, the following resolution was adopted:

**WHEREAS**, the Pueblo of Jemez is a duly recognized sovereign tribal government with a Governor and Tribal Council empowered to exercise all governmental powers, fiscal authority and tribal sovereignty; and

**WHEREAS**, the Pueblo of Jemez wishes to enact a Tribal Leasing Code, as provided under the Helping Expedite and Advance Tribal Homeownership Act (Hearth Act) of 2012, to authorize, regulate, and streamline the leasing and review process for agricultural, business, educational, public, religious, recreational, solar resource, and wind resource leases on Pueblo of Jemez Lands; and

**WHEREAS**, the Pueblo of Jemez through adoption of the Pueblo of Jemez Tribal Leasing Code wishes to promote Tribal self-sufficiency to protect and promote the health and welfare of Pueblo residents, and the economic security of the Pueblo; and

**WHEREAS**, the Pueblo of Jemez seeks to promote revenue and economic development for the Pueblo government and its members, and further Pueblo development projects through efficient control and regulation of leasing on Pueblo Lands; and

**WHEREAS**, the Tribal Council has reviewed the provisions of the Pueblo of Jemez Tribal Leasing Code and is satisfied it meets the needs of the Pueblo.

**NOW THEREFORE BE IT RESOLVED THAT** TITLE XVI Pueblo of Jemez Tribal Leasing Code is adopted pursuant to the inherent sovereign authority of the Pueblo of Jemez to control and regulate land and businesses on Jemez tribal lands; and

**BE IT FURTHER RESOLVED THAT** Governor is authorized to submit the Pueblo of Jemez Tribal Leasing Code to the Office of the Assistant Secretary – Indian Affairs for approval in accordance with the procedures set forth in the HEARTH Act; and

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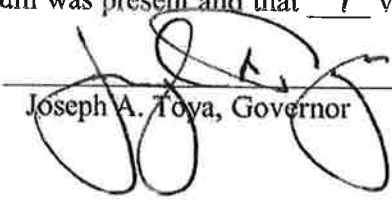
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**BE IT FURTHERMORE RESOLVED THAT** the Pueblo of Jemez Tribal Leasing Code shall become effective upon approval by the Office of the Assistant Secretary – Indian Affairs or his designee.

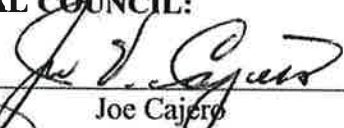
**CERTIFICATION**

I, THE UNDERSIGNED, as Governor of Pueblo of Jemez do hereby certify that the Jemez Tribal Council at a duly called meeting which was convened and held on the 28<sup>th</sup> day of July 2017, approved the foregoing resolution that a quorum was present and that 9 voted for and 0 opposed and 0 abstained.

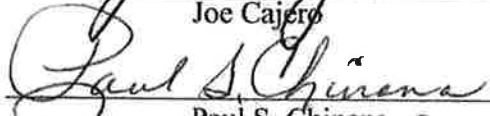
  
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Joseph A. Toya, Governor

ATTEST:   
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Allison Noguera  
Lieutenant Governor

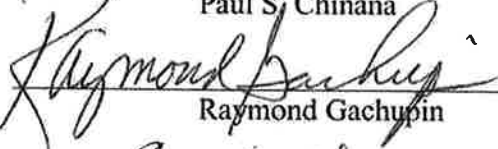
**TRIBAL COUNCIL:**

  
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Joe Cajero

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Jose E. Magdalena

  
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Paul S. Chinana

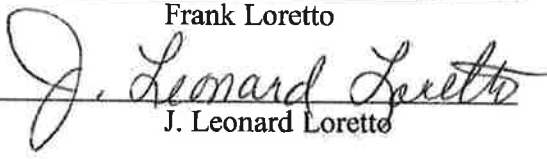
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Jose L. Pecos

  
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Raymond Gachupin

  
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David M. Toledo

  
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Frank Loretto

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Vincent A. Toya, Sr.

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Joshua Madalena

  
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David R. Yepa

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**TITLE XVI  
PUEBLO OF JEMEZ TRIBAL LEASING CODE**

**TABLE OF CONTENTS**

<b>CHAPTER 1</b>	<b>GENERAL PROVISIONS</b>	
Section 16-1-1	Short Title	1
Section 16-1-2	Authority	1
Section 16-1-3	Purpose	1
Section 16-1-4	Scope	2
Section 16-1-5	Applicable Law	2
Section 16-1-6	Effective Date	2
<b>CHAPTER 2</b>	<b>DEFINITIONS</b>	2
<b>CHAPTER 3</b>	<b>LEASE APPLICATION PROCESS</b>	
Section 16-3-1	Application	5
Section 16-3-2	Access Permit	6
Section 16-3-3	Documentation	6
Section 16-3-4	Types of Leases Covered by this Ordinance	7
Section 16-3-5	Environmental Review	7
<b>CHAPTER 4</b>	<b>LEASE REQUIREMENTS</b>	
Section 16-4-1	Mandatory Lease Provisions	7
Section 16-4-2	Negotiable Lease Provisions	9
Section 16-4-3	Payment and Documentation	9
Section 16-4-4	Recording of Lease	10
Section 16-4-5	Approval and Execution of Leases	10
Section 16-4-6	Lease Duration	10
Section 16-4-7	Rent and Consideration	11
Section 16-4-8	Land Survey	11
Section 16-4-9	Insurance	11
Section 16-4-10	Effective Date of Lease	12
Section 16-4-11	Permanent Improvements	12
Section 16-4-12	Wind and Solar Resources Lease	13
<b>CHAPTER 5 ENVIRONMENTAL REVIEW</b>		
Section 16-5-1	Requirements	13
Section 16-5-2	Categorical Exclusions	14
Section 16-5-3	Report to Council	14
Section 16-5-4	Environmental Review Statement Contents	14

Section 16-5-5	Minimum Review Requirements	14
Section 16-5-6	Environmental Review Statement Documentation	14
Section 16-5-7	Environmental Review Prepared by another Entity	14
Section 16-5-8	Public Notice	15
Section 16-5-9	Response to Public Comments	15
Section 16-5-10	Conclusion of Environmental Review Statement Process	16
Section 16-5-11	Appeal	16
<b>CHAPTER 6</b>	<b>SUBLEASE AND ASSIGNMENTS</b>	
Section 16-6-1	Approval Required	16
<b>CHAPTER 7</b>	<b>LEASE ADMINISTRATION</b>	
Section 16-7-1	Administration Under this Code and Federal Law	17
Section 16-7-2	Management Practices	17
Section 16-7-3	Inspection of Leased Premises	17
Section 16-7-4	Accounting	17
Section 16-7-5	Administrative Fees	18
Section 16-7-6	Enforcement	18
Section 16-7-7	Complaints, Nuisance, Harmful or Threatening Activity	18
Section 16-7-8	Breach of Lease, Cancellation and Remedies	18
Section 16-7-9	Trespass	19
<b>CHAPTER 8</b>	<b>APPEALS AND HEARINGS</b>	
Section 16-8-1	Court Review	19
Section 16-8-2	Appeals	20
<b>CHAPTER 9</b>	<b>MISCELLANEOUS</b>	
Section 16-9-1	Amendments	21
Section 16-9-2	Severability	21
Section 16-9-3	Compliance with Other Laws	21
Section 16-9-4	Limited Waiver of Sovereign Immunity	21
Section 16-9-5	Repeal of Inconsistent Laws	21

## TITLE XVI

### PUEBLO OF JEMEZ TRIBAL LEASING CODE

#### CHAPTER 1 GENERAL PROVISIONS

##### Section 16-1-1 Short Title

This Code shall be known as the "Pueblo of Jemez Tribal Leasing Code," and the short title "Tribal Leasing Code."

##### Section 16-1-2 Authority

1. This Tribal Leasing Code is enacted pursuant to the inherent sovereign authority of the Pueblo of Jemez to control and regulate land and businesses on the Jemez Pueblo Lands.
2. The Helping Expedite and Advance Responsible Tribal Homeownership Act (Hearth Act of 2012), P.L. 112-151 amending 25 U.S.C. 415, authorizes the Pueblo of Jemez to develop leasing regulations and grant leases, provided the Pueblo's regulations meet the requirements of the Secretary of the Interior, hereinafter Secretary. The provisions herein have been enacted to meet those requirements and authorize the Pueblo of Jemez to regulate leasing on Jemez Pueblo Lands.

##### Section 16-1-3 Purpose

The purposes of this Tribal Leasing Code are:

1. To authorize, permit and comprehensively regulate agricultural, business, educational, public, religious, recreational, wind and solar resources leasing on Jemez Pueblo Lands, and prevent unlawful conduct in the course of such activities.
2. To promote revenue for economic development for the Pueblo government and its members.
3. To promote and support Tribal self-sufficiency and a strong Tribal government.
4. To streamline the leasing and review process that conforms to Pueblo law, and promotes Pueblo development objectives.
5. To protect the health and welfare of Pueblo residents, the political integrity of the Pueblo, and the economic security of the Pueblo through effective control and regulation of leasing on Jemez Pueblo Lands.

**Section 16-1-4          Scope**

1.      This Code applies to all persons desiring to engage in, participate in, or undertake activities relating to businesses, religious, educational, recreational, cultural, or other public purpose, on Jemez Pueblo Land that require a Lease or permit.
2.      This Code covers all "Jemez Pueblo Land" as defined in Chapter 2 (m).
3.      This Code shall apply to Leases providing for agricultural use, commercial or business leases, Wind and Solar Resources and Wind Energy Evaluation Leases.
4.      This Code does not apply to residential leases, exploration, development, or extraction of any mineral resources, any Lease of land owned in unrestricted fee or individually owned Indian land or any Lease prior to the effective date of this Tribal Leasing Code.
5.      This Code does not allow for mortgages of Jemez Pueblo Land. This Code, however, shall apply to leasehold mortgages only if approved by Tribal Council Resolution and executed by Governor of the Pueblo for the purpose of financing the development and improvement of the lease premises.

**Section 16-1-5          Applicable Law**

1.      Every Lease covered under this Code shall be subject to and governed by Pueblo Law and applicable federal law exclusively.
2.      All parties to a Lease, including nonmember persons, approved pursuant to the process set forth in Chapter 3 of this Code, shall be deemed to have consented to the jurisdiction of the Pueblo of Jemez. This provision shall be an express lease term in the lease document.
3.      Pueblo Law applies to Jemez Pueblo Land, except to the extent that Pueblo Law is inconsistent with applicable federal law.

**Section 16-1-6          Effective Date**

The provisions of this Code shall be effective upon approval by both the Pueblo of Jemez Tribal Council, and the Secretary.

**CHAPTER 2          DEFINITIONS**

For purposes of this Code:

- a.      "Access Permit" means a document authorizing a prospective Lessee and its contractor(s) access to the Jemez Pueblo Land for a specified period of time and for a particular stated purpose.

- b. "Agricultural Land" means Jemez Pueblo Land suited or used for the production of crops, livestock or other agricultural products on Jemez Pueblo Land suited or used for a business that supports the surrounding agricultural community.
- c. "Agricultural Lease" means a Lease of Agricultural Land for farming purposes.
- d. "Applicant" means a person requesting a Lease of a parcel of Jemez Pueblo Land.
- e. "Application" means a written request to the Realty Department to lease a parcel of Jemez Pueblo Land.
- f. "Assignment" means an agreement between a Lessee and assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations under the Lease.
- g. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.
- h. "Business Lease" means any Lease that is not defined and covered as an agricultural Lease, WEEL, WSR Lease or Public Purpose Lease under this Code. A Business Lease may be for commercial, industrial, retail, entertainment, office, manufacturing, storage, distribution, bio-mass, waste-to-energy or other business purpose.
- i. "Environment" means the Jemez Pueblo Land, air quality, water, minerals, flora, fauna, ambient noise, areas of critical habitat, and objects or areas of historic, religious, or cultural significance to the Pueblo.
- j. "Environmental Review" means the process by which the Natural Resources Department assesses and determines effects, if any, of a proposed Lease on the Environment and which results in one of three findings: Categorical Exclusion, an environmental assessment with no Significant Effects, or an Environmental Review Statement.
- k. "Environmental Review Statement" means a document prepared by the Pueblo's Natural Resources Department to describe the potential Significant Effects on the Environment as a result of a proposed Lease.
- l. "Indemnify" means to restore the victim of a loss, in whole or in part, by payment, repair, or replacement.
- m. "Jemez Pueblo Land" means any land, except individually-owned land, in which the surface estate is owned by the Pueblo and is either held in trust or restricted status. The term also includes lands held by the United States in trust for any Pueblo of Jemez federally chartered corporation organized under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).
- n. "Lease" means a written agreement between the Pueblo and a Lessee, whereby the Lessee is granted a right to possess and use only the surface of Jemez Pueblo Land for a specified purpose and duration, and includes any amendments, exhibits, and attachments.

- o. "Lessee" means a person or entity who has acquired a legal right to possess or use Jemez Pueblo Land by a Lease granted under this Tribal Leasing Code.
- p. "Lease 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.
- q. "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.
- r. "LTRO" means the Land Titles and Records Office of the Bureau of Indian Affairs.
- s. "Mortgagee" means the holder of a Leasehold Mortgage
- t. "Natural Resources Department" means the department within the Pueblo responsible for preserving, restoring and protecting the Pueblo's natural and cultural resources.
- u. "Permanent Improvement" means a building, other structure, and associated infrastructure attached to the leased premises.
- v. "Permit" means a written, non-assignable agreement between the Pueblo and the Permittee, whereby the Permittee is granted a temporary, revocable privilege to use Pueblo Trust or Restricted Land, for a specified purpose.
- w. "Person" means a natural person, any association, partnership, corporation, firm or other form of business association.
- x. "Premises" means the specifically identified parcel(s) or tract(s) of Pueblo Trust or Restricted Land that is subject to a particular Lease.
- y. "Public" for Environmental Review Purposes means any Person or entity with the potential to be significantly affected by the Lease or the Lease activity.
- z. "Pueblo" means the Pueblo of Jemez, a federally recognized Indian tribe.
- aa. "Pueblo Law" means the body of law of the Pueblo, consisting of its codes, ordinances, regulations, court decisions, and customs.
- bb. "Realty Department" means the department of the Pueblo of Jemez responsible for providing real estate services and administrative support to Tribal Council, Departments and tribal members in accordance with Pueblo Law and applicable federal laws.
- cc. "Secretary" means the Secretary of the U.S. Department of Interior.

- dd. "Significant Effects on the Environment" means a substantial, or potentially substantial, adverse change in the quality of the human environment, including land, air, water, minerals, flora, fauna, ambient noise, and areas of historic, cultural areas and objects of historic, cultural or aesthetic significance.
- ee. "Sublease" means a written agreement by which the Lessee grants to a Person a right to possess or use some, or all of the leased premises, but having no greater rights than that held by the Lessee, under the Lease, and includes any amendments, exhibits, and attachments.
- ff. "Trespass" means the unauthorized possession, occupancy, holding over upon, entry upon or use of Jemez Pueblo Lands.
- gg. "Tribal Council" means the governing body of the Pueblo of Jemez.
- hh. "Tribal Court" means the court established by Pueblo Law.
- ii. "Trust or Restricted Land" means any tract held in Trust or Restricted Status.
- jj. "Trust or Restricted Status" means (1) that the United States holds title to the tract in trust for the benefit of Pueblo of Jemez; or (2) that the Pueblo of Jemez holds title to the tract, 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 limitation in federal law.
- kk. "Violation" means a failure to take an action, including payment of compensation when required by the Lease, or to otherwise not comply with a term of the Lease.
- ll. "Wind and Solar Resource (WSR) Leases" means leases that authorize possession or use of Jemez Pueblo land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity for the benefit of the Pueblo of Jemez.
- mm. "Wind Energy Evaluation Lease (WEEL)" means short-term leases, up to three (3) years, that authorize possession or use of Jemez Pueblo land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

## **CHAPTER 3 LEASE APPLICATION PROCESS**

### **Section 16-3-1 Application**

1. Every Applicant for a Lease covered by this Tribal Leasing Code (see Section 16-3-4) shall submit a completed application on forms approved by the Realty Department, and shall contain such information and documents specified. The application must, at a minimum, identify:

- a. the Applicant;

- b. the location of Jemez Pueblo Land proposed for the Lease;
- c. the proposed duration for the Lease;
- d. the proposed access to Jemez Pueblo Land proposed for the Lease;
- e. the anticipated use of Jemez Pueblo Land proposed for the Lease; and
- f. any planned, or current use of existing, Permanent Improvement on Jemez Pueblo Land proposed for the Lease.

2. All information included in the application shall be true and accurate and complete as of the date of submission to the Realty Department. If there is any change in the information contained in the application, the Applicant shall promptly file a written amendment to the application.

3. Upon receipt of a completed application and required administrative fee for Lease review, the Realty Department, in coordination with the Natural Resources Department, shall conduct the necessary investigation to prepare an Environmental Review Statement and research of documents.

#### **Section 16-3-2 Access Permit**

Upon request of the Applicant, the Pueblo Governor or his designee may issue an Access Permit to allow the Applicant or its contractors access to Jemez Pueblo Land proposed for the Lease to prepare the documentation required by Section 16-3-3.

#### **Section 16-3-3 Documentation**

The Realty Department may request that the Applicant provide the following documentation related to Jemez Pueblo Land proposed for Lease:

1. a site plan describing the type and location of any existing or proposed Permanent Improvements;
  2. financial statements;
  3. an appraisal;
  4. a professional land survey;
  5. a schedule of construction and development plan for proposed Permanent Improvements;
- and

6. an Environmental Review, including a cultural and archeological survey that may be prepared under Chapter 5.

#### **Section 16-3-4 Types of Leases Covered by this Ordinance**

1. Agricultural Leases are issued only for Jemez Pueblo Land identified appropriate for agricultural use or development with the Pueblo's agricultural management plan. Prior to approval of an Agricultural Lease, the Realty Department will verify Agricultural Lands from an acreage map. Agricultural leases include all leases for agricultural purposes.
2. Business Leases include all leases for business purposes pursuant to this Code.
3. Wind and Solar Resources Leases include all leases for wind and solar energy purposes pursuant to this Code.
4. Wind Energy Evaluation Leases include all leases for evaluating wind resources pursuant to this Code.
5. Other Leases for Public, Educational, Recreational or Religious purposes.
6. The Realty Department will maintain maps of property which the Pueblo has approved for leases covered by this Code.

#### **Section 16-3-5 Environmental Review**

Upon receipt of a completed application, and any required documentation, the Natural Resources Department shall undertake the Environmental Review process in accordance with Chapter 5 of this Code.

### **CHAPTER 4 LEASE REQUIREMENTS**

#### **Section 16-4-1 Mandatory Lease Provisions**

Once an application is complete under Section 16-3-1, the Realty Department will draft a Lease per the requirements under Chapter 4. Upon completing, or during, the Environmental Review process, the Pueblo and the Applicant may negotiate the terms and conditions of a proposed Lease.

1. In the event that historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with a Lease, all activity in the immediate vicinity of the properties, resources, remains, or items must immediately cease and the Lessee will contact the Tribal Historic Preservation Officer to determine how to proceed.
2. All Leases shall be in writing, and must contain the following:

- a. a legal description; descriptions must be of sufficient detail to meet recording requirements for BIA's Land Title and Records Office (LTRO);
- b. the purpose of the Lease;
- c. the authorized uses of Pueblo of Jemez Land proposed for the Lease;
- d. the parties to the Lease;
- e. the term of the Lease and any option to renew, including time and manner for exercise;
- f. the effective date of the Lease;
- g. the rent and payment requirements, including payment due dates, payee, place of payment; and if applicable any adjustment, including how and when the adjustment will be effective, and how disputes regarding the adjustment or rental payment will be resolved, and form of payment;
- h. ownership, and any plans for construction, operation, maintenance, management and removal of any Permanent Improvements;
- i. disposition of Permanent Improvements upon Lease expiration;
- j. reports, surveys, site assessments, etc., to facilitate compliance with applicable tribal environmental, cultural resource and land use requirements; and
- k. all parties to the Lease, including nonmember persons, shall be deemed to have consented to the jurisdiction of the Pueblo of Jemez, a federally recognized tribe.

3. If the leased premises are within an Indian irrigation project or drainage district for which the Secretary assesses and collects a fee to administer, operate, maintain, or rehabilitate as provided by 25 C.F.R. Part 171, the Lease must state that the Lessee shall pay all operation and maintenance charges that accrue during the Lease term, unless an exception in Part 171 applies. The Lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

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

5. The Lessee holds the United States and the Pueblo harmless from any loss, liability, or damages arising out of the Lessee's use or occupation of the leased premises.

6. The Lessee indemnifies the United States and Pueblo against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs

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

7. Appropriate stipulations or conservation plans shall be developed and incorporated into all Agricultural Leases.
8. Agricultural Land under the jurisdiction of the Pueblo must be managed in accordance with the goals and objectives of any agricultural resource management plan developed by the Pueblo, if any, or by the BIA in close consultation with the Pueblo.
9. Agricultural leases must state that if the Lessee is a corporation or other legal entity, it must provide organizational and financial documents as needed to show the lease is enforceable against the Lessee and the Lessee will be able to perform all its lease obligations.
10. There must not be any unlawful conduct, creation of a nuisance, illegal activity or the negligent use or waste of the leased premises.
11. The Lessee must comply with all applicable laws, ordinances, rules, regulations and other legal requirements.

#### **Section 16-4-2 Negotiable Lease Provisions**

The lease may include other terms and conditions negotiated by the parties including but not limited to the following:

1. any additional consideration, notice to lenders, whether default restricts exercise of option;
2. any late payment charges, penalties, interest, or special fees;
3. any additional due diligence requirements, if applicable;
4. any additional required bond or other form of financial security, if applicable;
5. any additional insurance requirements, if applicable;
6. any other terms and conditions negotiated by the parties.

#### **Section 16-4-3 Payment and Documentation**

All rent, adjustments, late payment charges, fines and/or special fees, any additional consideration, dispute settlements, and all other forms of payment shall be made out to the "Pueblo of Jemez," and paid directly to the Jemez Finance Department. For lease payments made directly to the Pueblo, the Pueblo must provide documentation to the BIA sufficient to enable the Secretary to discharge the trust responsibility of the United States, 25 U.S.C. §415

(h)(6).

**Section 16-4-4 Recording of Lease**

1. A record of the Lease, including any Lease Assignment, Sublease, Leasehold Mortgage and release, plats, and amendments and renewal thereof, shall be recorded with the Realty Department, and with the LTRO.
2. The Realty Department shall provide documentation per 25 U.S.C. § 415 (h) (6) showing rental payments to the Pueblo sufficient to enable the Secretary to discharge the trust responsibility of the United States under 25 U.S.C. § 415(h)(7).

**Section 16-4-5 Approval and Execution of Leases**

1. At the conclusion of the leasing process, which includes submittal of complete application, Environmental Review, lease negotiation, and any requested additional documentation, the Realty Department shall report to the Pueblo Governor within seven (7) business days that a Lease under this Code is available for consideration.
2. The Pueblo Governor shall review the Lease application to ensure compliance with the provisions of this Code, and shall report to the Tribal Council that a Lease under this Code is available for consideration.
3. Leases governed by this Code are subject to approval by the Tribal Council, upon a finding that such Lease is in the best interest of the Pueblo of Jemez, at the sole discretion of the Tribal Council.
4. Any Lease approved by Tribal Council resolution under this Code shall be signed by the Pueblo Governor, or his authorized designee, on behalf of the Pueblo.
5. Any amendments to a Lease shall be approved by Tribal Council Resolution and any assignment, sublease, or leasehold mortgage must be consented to or approved by Tribal Council, unless the terms and conditions of the Lease provide otherwise.

**Section 16-4-6 Lease Duration**

1. The Tribal Council may approve a Lease for agricultural, business, Wind and Solar Resources purposes for any duration that does not exceed 25 years with an option to renew for up to two additional terms (each of which may not exceed 25 years).
2. The Tribal Council may approve a Lease for educational, public, recreational, or religious purposes for a term not to exceed 75 years.
3. The Tribal Council may approve a Wind Energy Evaluation Lease not to exceed three (3) years.

**Section 16-4-7          Rent and Consideration**

1.        The Realty Department shall determine the appropriate rent for a Lease through a market analysis, appraisal, other valuation method, by negotiation, or in accordance with Section 16-4-7 (2).
2.        The Tribal Council will accept nominal rent, less than market value rent, and/or in-kind consideration for the leasing of Jemez Pueblo Land, if the Tribal Council determines that the occupancy of a Lease applicant will be beneficial to the community (e.g., employment opportunities for Pueblo members, provision for utilities services to the Pueblo, transfer of ownership of Permanent Improvements to the Pueblo at Lease expiration) and elects to accept Lessee's services to the community as whole or partial in-kind consideration.
3.        Monetary rent must be paid directly to the Jemez Finance Department, who shall account for rent received for leases of Jemez Pueblo Land.
4.        When Lease compensation is greater than nominal or in-kind, a Lease shall specify the rate of interest to be charged if the Lessee fails to make Lease payments on time, and identify additional late payment fees.
5.        Unless the Lease provides otherwise, interest charges and late payment fees will apply in the absence of any notice to the Lessee from the Realty Department, and the Lessee's failure to pay such amounts constitutes a breach of the Lease.

**Section 16-4-8          Land Survey**

The Lease must describe the leased premises by reference to a land survey prepared by a professional surveyor licensed by the New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors, or an equivalent state or federal surveyor licensure.

**Section 16-4-9          Insurance**

1.        The Realty Department may require the prospective Lessee to secure, maintain, and provide proof to the Realty Department of liability and/or casualty insurance, and to require that the Pueblo and the United States are additional named insured parties, in amounts sufficient to cover any Permanent Improvement, personal injury or death, or any other risk to which the Pueblo and the United States may be exposed.
2.        Lessee shall provide the Realty Department within thirty (30) calendar days written notice of cancellation of any insurance required under Section 16-4-9(1). Failure to provide notice of cancellation shall constitute a breach of Lease.
3.        The Lessee shall provide a performance bond or alternative form of security, with the exception of the following:

- a. The Lease is for religious, educational, recreational, cultural, or other public purposes; or
  - b. Jemez determines a waiver is in the best interest of Jemez.
4. The performance bond or alternative form of security must be in an amount sufficient to secure all contractual obligations.
  5. The performance bond or alternative form of security must require the surety to provide at least sixty (60) days' notice before canceling a performance bond or other security. Failure to provide a substitute performance bond or security is a violation of the Lease.
  6. If a performance bond is required, 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.

**Section 16-4-10 Effective Date of Lease**

A Lease and any Lease related document, including any amendment, Lease Assignment, or Sublease, must state an effective date to be valid.

**Section 16-4-11 Permanent Improvements**

1. Unless otherwise provided in the Lease, Lessee shall be responsible for placing, constructing, maintaining, and using a Permanent Improvement located on Jemez Pueblo Land under a Lease.
2. Lessee shall own any Permanent Improvement to the leased premises for the duration of the Lease.
3. Unless otherwise provided in the Lease, the following govern the disposition of Permanent Improvements upon expiration, termination, or breach of a Lease:
  - a. no Permanent Improvement may be removed without the Realty Department's approval, if a Lessee owes rent or any other sums under the Lease, is in breach of any Lease obligation, has created a Lease Assignment, or is in default;
  - b. any Lessee who exercises the right of removal must pay costs related to the relocation of Permanent Improvements and shall restore Jemez Pueblo Land to its original condition;
  - c. removal of Lessee improvements where permitted must be completed within thirty (30) calendar days of the expiration or termination of the lease (the "Removal Period");
  - d. any Permanent Improvement or other property abandoned on Jemez Pueblo Land at the expiration or termination of a Lease, or after the expiration of the Removal Period under this Section, shall automatically become the property of the Pueblo, unless the Pueblo notifies the Lessee in writing of its election to declare such abandoned property a nuisance within ninety (90) days of the expiration or termination of the Lease, or the removal period; and

e. the Lessee's obligation to remove Permanent Improvements from Jemez Pueblo Land and to restore Jemez Pueblo Land survives the expiration or termination of the Lease.

#### **Section 16-4-12 Wind and Solar Resources Lease**

1. A Wind and Solar Resource Lease must include due diligence requirements that require the Lessee to:

a. Commence installation of energy facilities within two (2) years after the effective date of the Lease or consistent with a timeframe in the resource development plan;

b. If installation does not occur, or is not expected to be completed, within the time period specified in this section, an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation, shall be provided;

c. Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards;

d. Repair, place into service, or remove from the site within a time period specified in the Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the Lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).

e. Identify who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission.

2. Failure of the Lessee to comply with the requirements of this section is a violation of the Lease and may lead to cancellation of the Lease

### **CHAPTER 5 ENVIRONMENTAL REVIEW**

#### **Section 16-5-1 Requirements**

Except as provided in Section 16-5-2, the Director of the Natural Resources Department, or his/her designee, shall prepare an Environmental Review statement in accordance with this Chapter that identifies and evaluates any Significant Effects of the proposed Lease on the Environment. Unless exempt under this Chapter, a Lease shall not be approved until the Environmental Review process pursuant to this Chapter and applicable Tribal regulations are complete.

1. The Pueblo shall not be bound by NEPA or its implementing regulations in administering the provisions of this Code.

2. This Chapter shall not apply to Environmental Reviews conducted in accordance with NEPA or other applicable law, by the Natural Resources Department, a State Agency, federal agency, or a non-Pueblo entity or person prior to the effective date of this Tribal Leasing Code.

#### **Section 16-5-2 Categorical Exclusions**

1. The Tribal Council finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment, and therefore are categorically excluded from the procedures set forth in this Chapter:

a. approval of a Lease for one (1) acre or less of contiguous land for construction and agricultural use of a single structure of one (1) to four (4) building units, and any associated improvements, existing access roads, and utilities; or

b. approval of a Lease for an existing business site, including any associated improvements, access roads, and utilities.

#### **Section 16-5-3 Report to Council**

The Natural Resources Department shall issue a written report within thirty (30) calendar days to the Tribal Council documenting its decision not to prepare an Environmental Review Statement based on any of the provisions in Section 16-5-2.

#### **Section 16-5-4 Environmental Review Statement Contents**

The Environmental Review Statement need only consider the potential impact of the proposed Lease, and does not need to consider alternative actions, including a no-action alternative, but shall consider Significant Effects.

#### **Section 16-5-5 Minimum Review Requirements**

The level of detail and depth of the analysis conducted by the Natural Resources Department is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment.

#### **Section 16-5-6 Environmental Review Statement Documentation**

An Environmental Review Statement shall be prepared in a format designed to fully inform the Public of any Significant Effects of the proposed Lease on the Environment.

#### **Section 16-5-7 Environmental Review Prepared by another Entity**

The Natural Resources Department may utilize and publish the Environmental Review Statement prepared by a State Agency, federal agency, or any other person or entity to fulfill the Natural Resources Department's requirements for Environmental Review process under this Chapter, provided such Environmental Review Statement conforms to this Chapter.

**Section 16-5-8 Public Notice**

1. The Realty Department shall notify the Public of the Natural Resources Department's Environmental Review Statement by the following methods:
  - a. publishing the notice in a newspaper or newsletter of general circulation in the Pueblo community;
  - b. posting the notice at Pueblo administration buildings and other locations within the Pueblo; and
  - c. disseminating the notice in any other manner reasonably determined to reach the Public including but not limited to posting on the Pueblo's website.
2. The notice of Environmental Review Statement must contain the following information:
  - a. a summary of the proposed Lease;
  - b. a summary of the need for the proposed Lease;
  - c. a summary of the Environmental Review statement;
  - d. the location where the Public can, without charge, obtain a copy;
  - e. the Natural Resources Department's recommendation on the proposed Lease; and
  - f. instructions on how the Public may submit written comments to the Natural Resources Department regarding the Environmental Review Statement during a comment period not to exceed thirty (30) calendar days from the date the notice is published.

**Section 16-5-9 Response to Public Comments**

1. The Natural Resources Department shall consider written comments received from the Public and provide a written response to relevant and substantive comments within thirty (30) calendar days of the closing of the comment period, and prior to submitting a Lease to the Tribal Council for consideration.
2. The Natural Resources Department's response will identify any recommended course of action to mitigate the Public concerns regarding the proposed Lease.
3. After the thirty (30) day comment period has closed, the Natural Resources Department will provide a written response to all relevant and substantive comments on any Significant Environmental Impact within ten (10) days, which the Governor of the Pueblo can extend up to an additional forty-five (45) days, if such additional time is needed to respond adequately to the

comments. The written response will include any proposed, recommended, or required mitigation measures addressing such Significant Environmental Impacts.

4. Based on comments received, the Natural Resources Department may revise the Environmental Review Statement, or suggest modifications as a condition of approval of the proposed Lease.

5. The Realty Department shall notify the Public of its response to comments and recommendation to the Tribal Council by the means described in Section 16-5-8(1).

#### **Section 16-5-10 Conclusion of Environmental Review Statement Process**

The Tribal Council may approve or disapprove the proposed Lease only after the Realty Department, in consultation with the Natural Resources Department:

1. identifies any Significant Effects of a proposed Lease on the Environment;
2. notifies the Public of the Environmental Review Statement;
3. reviews Public comments;
4. provides written responses to any relevant Public comments; and
5. determines any modifications or conditions to Lease approval; or
6. determines, in accordance with Section 16-5-2, that no Environmental Review Statement is required.

#### **Section 16-5-11 Appeal**

1. The Public or the Applicant may appeal the Natural Resources Department's determination related to its Environmental Review Statement to the Tribal Court in accordance with Chapter 8 of this Code.

2. A timely appeal of the Natural Resources Department's Environmental Review Statement determination suspends Tribal Council approval action until resolution of the appeal by Tribal Court.

### **CHAPTER 6 SUBLEASE AND ASSIGNMENTS**

#### **Section 16-6-1 Approval Required**

1. A Sublease or Lease Assignment shall be void without the Tribal Council's approval.
2. The Tribal Council may approve a provision in a Lease allowing Sublease or Lease Assignment without further approval of Council.

3. The Tribal Council may condition its approval of a Sublease or Lease Assignment upon any terms or conditions deemed to be in the Pueblo's best interests.
4. The Tribal Council's approval of a Sublease or Lease Assignment does not relieve the Lessee from any liability that may have arisen prior to a Sublease or Lease Assignment.
5. Approval of a Sublease or Lease Assignment does not release the Lessee from its liability for performance of all terms, duties, and obligations under the Lease.
6. The Tribal Council's approval of a Sublease or Lease Assignment does not constitute approval of any subsequent Sublease or Lease Assignment.
7. No Sublease or Lease Assignment will extend the term of the Lease, and the Lessee shall notify its sublessee or assignee of the terms and conditions of the Lease.
8. The expiration of the Lease will automatically, and without notice, terminate any Sublease or Lease Assignment, unless otherwise agreed to in writing by the Tribal Council.
9. All Subleases and Lease Assignments and amendments thereto shall be recorded and maintained by the Realty Department with copies provided to the LTRO.

## **CHAPTER 7 LEASE ADMINISTRATION**

### **Section 16-7-1 Administration under this Code and Federal Law**

The Realty Department shall act as agent of the Pueblo as Lessor to administer any Lease approved under this Code.

### **Section 16-7-2 Management Practices**

The Realty Department shall employ sound real estate management practices, including collections, monitoring, enforcement, relief, and remedies that are consistent with and in accordance with this Code.

### **Section 16-7-3 Inspection of Leased Premises**

The Realty Department has the right at any reasonable time during the term of a Lease and upon reasonable notice to Lessee or sublessee to enter leased premises within the Pueblo to inspect the land and any Permanent Improvements.

### **Section 16-7-4 Accounting**

The Realty Department, in coordination with the Pueblo's Finance Department, shall implement and maintain an accounting system to ensure proper accounting of rent payments of leases in accordance with generally accepted accounting principles.

**Section 16-7-5            Administrative Fees**

The Pueblo may charge an administrative fee to cover the expenses of processing a Lease, Sublease, Assignment, Access Permit, amendment, or other transaction under this Chapter.

**Section 16-7-6            Enforcement**

1.     The Pueblo shall enforce the covenants, terms and conditions of any Lease approved in accordance with this Code.
2.     Nothing in this Code prohibits the Pueblo from requesting, or limits the authority of, the Secretary to enforce the terms and conditions of, or cancel, any Lease.

**Section 16-7-7            Complaints, Nuisance; Harmful or Threatening Activity**

1.     The Pueblo or its authorized designee may take any actions to abate a nuisance created by Lease occupancy or activities of a Lessee or its contractors, including unauthorized or abandoned Permanent Improvements, and other abandoned property.
2.     If a Lessee, its contractors, employees or other party or person causes or threatens to cause harm to the leased premises, public health, or public safety, or engages in criminal activity on the leased premises, the Pueblo or its authorized designee may take emergency action in accordance with Pueblo Law, including cancelling the Lease, commencing eviction proceedings in Tribal Court, seeking forcible entry and detainer, or taking any other action deemed appropriate to protect the public interest, the leased premises, or the Environment.
3.     Expenses, costs, and fees incurred by the Pueblo to remove unauthorized Permanent Improvements or equipment abandoned or otherwise, or to mitigate harm, threat of harm, damage, or waste to Jemez Pueblo Land or Pueblo members, arising from use or occupancy under a Lease, shall remain the sole liability of the Lessee and are deemed additional rent due by Lessee at the time incurred.

**Section 16-7-8            Breach of Lease, Cancellation and Remedies**

1.     Unless otherwise stated in a Lease, the Lessee shall be in default under a Lease if a breach of the Lease is not cured within thirty (30) calendar days after the Realty Department gives notice of the breach to the Lessee.
2.     A breach of the Lease, includes a failure to pay any rent or other monetary obligation due under the Lease, violation of any term, condition, or covenant of the Lease, or failure to perform or observe any other obligation under the Lease by any party.
3.     On the breach of a Lease term, condition or covenant, the Pueblo, as well as the Secretary, shall have the relevant remedies available, at law or in equity, in Tribal Court and as

provided in the Lease, including negotiated remedies, cancellation of the Lease, a proceeding to recover any damages from Lessee, sublessee or mortgagee.

4. If the Lessee does not cure a violation of a Lease within the required cure period, the Pueblo may, in addition to any other remedies, terminate the Lease upon notice to the Lessee.
5. The BIA may, upon reasonable notice from the Pueblo and at the BIA's discretion, enforce the provisions of, or cancel, a Lease document.
6. A Lease termination notice must:
  - a. explain the grounds for termination;
  - b. notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease, if applicable;
  - c. notify the Lessee of the Lessee's right to appeal under Pueblo law, including the possibility that Tribal Court may require the Lessee to post an appeal bond;
  - d. order the Lessee to vacate the property within thirty (30) days of the date of receipt of the termination letter, if an appeal is not filed by that time; and
  - e. order the Lessee to take any other action the Realty Department deems necessary to protect the Pueblo, if applicable.
7. Pending resolution of any dispute, the Lessee shall continue to pay all rent and comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leased premises.

#### **Section 16-7-9      Trespass**

A Lessee or successor in interest to a Lease remaining in possession of the leased premises after expiration or termination of any Lease constitutes trespass on Jemez Pueblo Land and is subject to Civil Trespass pursuant to Title XIV of the Pueblo Code.

### **CHAPTER 8      APPEALS AND HEARINGS**

#### **Section 16-8-1      Court Review**

1. The Tribal Court has jurisdiction over any action to enforce the covenants, terms and conditions of a Lease approved by the Tribal Council.
2. The Tribal Court has jurisdiction over an action that seeks to compel the Natural Resources or Realty Department action or to challenge the Natural Resources or Realty Department's determination under any Section of this Code.

3. The Tribal Court does not have jurisdiction over the Tribal Council to compel approval or disapproval of any Lease.

#### **Section 16-8-2 Appeals**

1. The Lessee or the Public may appeal the Realty Department's inaction or any final determination of the Realty Department, or the Natural Resources Department's determination related to its Environmental Review Statement to Tribal Court by filing a notice of appeal in Tribal Court within fifteen (15) calendar days of the:

- a. Realty or Natural Resources Department's written determination; or
- b. date upon which Realty or Natural Resources Department action was required to be complete.

2. The Tribal Court has no jurisdiction to consider an appeal filed beyond the appeal period in this Section and the Realty Department's determination or action becomes final.

3. The notice to initiate an appeal must state the following:

- a. the Lessee's or Public's interest in the Lease;
- b. the facts necessary to understand circumstances giving rise to the appeal;
- c. the question to be resolved; and
- d. the relief sought.

4. The Lessee or the Public shall provide notice to the Realty Department and the Governor of the Pueblo promptly after the filing of the notice of appeal in the Tribal Court, and the Realty Department's time period to respond under Tribal Court procedures does not begin until notice is provided.

5. Tribal Court shall uphold the Realty Department's final determination or action unless it finds that the Realty Department's action:

- a. was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law;
- b. exceeded the Realty Department's jurisdiction, authority, or limitations; or
- c. is unsupported by substantial evidence.

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

7. Any action under this Section shall be conducted in accordance with the Rules of Procedure for the Tribal Court.

8. The decision of the Tribal Court is a final decision and no further appeal is available.

9. Notwithstanding anything to the contrary in Chapter 8 or otherwise in this Ordinance, the Jemez Tribal Council retains authority to approve other dispute resolution and appeal provisions which may include waivers of sovereign immunity on a case-by-case basis applicable to particular leases approved under this Ordinance.

## **CHAPTER 9 MISCELLANEOUS**

### **Section 16-9-1 Amendments**

Minor technical amendments to this Code may be made without BIA approval. Major substantive changes to this Code must be submitted to the Secretary for approval.

### **Section 16-9-2 Severability**

In the event any provision of this Code or the application thereof to any Person or circumstances is held invalid, the remainder of this Code shall not be affected thereby and, to this end, the provisions of the Code are declared to be severable.

### **Section 16-9-3 Compliance with Other Laws**

All parties to any Lease entered pursuant to the provisions of this Code, shall comply with all applicable Tribal and federal laws, rules, and regulations in performance of all obligations under the Lease.

### **Section 16-9-4 Limited Waiver of Sovereign Immunity**

In addition to the remedies provided in Chapter 8, the Tribal Council reserves the authority to negotiate a limited waiver of sovereign immunity pursuant to Section 16-8-2 (9).

### **Section 16-9-5 Repeal of Inconsistent Laws**

All ordinances and resolutions inconsistent with this Code are hereby repealed. To the extent that this document imposes greater restrictions than those contained in any other Tribal ordinance, the provisions of this Code shall govern.

retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pueblo of Jemez, New Mexico.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2021-18824 Filed 8-31-21; 8:45 am]

BILLING CODE 4337-15-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[212A2100DD/AAK001030/  
AOA501010.999900]

#### HEARTH Act Approval of Title XVI Pueblo of Jemez Tribal Leasing Code

**AGENCY:** Bureau of Indian Affairs,  
Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Title XVI Pueblo of Jemez Tribal Leasing Code under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter agricultural, business, and wind and solar leases without further BIA approval.

**DATES:** BIA issued the approval on August 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, [sharelene.roundface@bia.gov](mailto:sharelene.roundface@bia.gov), (505) 563-3132.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act

authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pueblo of Jemez, New Mexico.

##### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of

rent is indistinguishable from an impermissible tax on the land." See *Seminole Tribe of Florida v. Stranburg*, 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447-48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." H. Rep. 112-427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. See *id.* at 810-11 (finding that State and local taxes

greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pueblo of Jemez, New Mexico.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2021-18825 Filed 8-31-21; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[212A2100DD/AAKC001030/  
AOA501010.999900253G]

#### Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the approval of Third Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Cowlitz Indian Tribe (Tribe) and the State of Washington (State).

**DATES:** The amendment takes effect on September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov*, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2021-18820 Filed 8-31-21; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[212A2100DD/AAKC001030/  
AOA501010.999900253G]

#### Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendments in the State of Washington

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the approval of the Fourth Amendment to the Tribal-State Compact (Fourth Amendment) for Class III Gaming between the Suquamish Tribe (Tribe) and the State of Washington (State), and the Fifth Amendment to the Tribal-State Compact (Fifth Amendment) for Class III Gaming between the Suquamish Tribe and the State of Washington.

**DATES:** The amendment takes effect on September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov*, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming

Regulatory Act (IGRA), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior must publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Fourth Amendment authorizes the Tribe to operate sports wagering at the Tribe's class III gaming facilities, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Fifth Amendment revises the definition section, allows for a second gaming facility, updates licensing and registration requirements, and adopts Appendix E, Limitation on Wagers, Credit Facilities, Problem Gambling Resources and Contributions. The Fourth and Fifth Amendments are approved.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2021-18823 Filed 8-31-21; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[212A2100DD/AAKC001030/  
AOA501010.999900253G]

#### Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the approval of the Fifth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Snoqualmie Indian Tribe (Tribe) and the State of Washington (State).

**DATES:** The amendment takes effect on November 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov*, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are