

**Dry Creek Rancheria
Band of Pomo Indians**

Government Code

TITLE 15. TRIBAL LAND LEASING CODE

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TABLE OF CONTENTS

CHAPTER 1. GENERAL PROVISIONS	SECTION 401. Management
SECTION 101. Short Title	SECTION 402. Accounting
SECTION 102. Purpose and Applicability	SECTION 403. Administrative Fees
SECTION 103. Authority	CHAPTER 5. ENFORCEMENT
SECTION 104. Definitions	SECTION 501. General
SECTION 105. Effective Date	SECTION 502. Defaults
SECTION 106. Approval	SECTION 503. Remedies
SECTION 107. Choice of Law	SECTION 504. Penalties
SECTION 108. Duration and Renewal	SECTION 505. Harmful or Threatening Activities
CHAPTER 2. OBTAINING A BUSINESS SITE LEASE	SECTION 506. Holdover
SECTION 201. Information	SECTION 507. Trespass
SECTION 202. Supporting Documents	CHAPTER 6. Appeals
SECTION 203. Minimum Provisions	SECTION 601. Appeals
SECTION 204. Records	SECTION 602. Appeal Bond
SECTION 205. Ownership of Records	SECTION 603. Scope of Review
SECTION 206. Tribal Preference	CHAPTER 7. RESERVED
CHAPTER 3. BUSINESS SITE LEASE REQUIREMENTS	CHAPTER 8. ENVIRONMENTAL REVIEW PROCESS
SECTION 301. Terms and Conditions	SECTION 801. General
SECTION 302. Duration and Renewal	SECTION 802. Threshold Determination
SECTION 303. Space Leases	SECTION 803. Action on Leasing Decision Subject to Completion of ERP
SECTION 304. Land Descriptions	SECTION 804. Environmental Review Process
SECTION 305. Appraisals	SECTION 805. Notice of Completion of ER
SECTION 306. Fair Annual Lease Value	SECTION 806. Conclusion of Environmental Process
SECTION 307. Environmental Review Process	CHAPTER 9. MISCELLANEOUS PROVISIONS
SECTION 308. Performance Bond	SECTION 901. Severability
SECTION 309. Insurance	SECTION 902. Effective Date
SECTION 310. Improvements	SECTION 903. Approval
SECTION 311. Subleases, Assignments, Amendments and Encumbrances	SECTION 904. Sovereign Immunity Preserved
CHAPTER 4. BUSINESS LEASE MANGAGMENT	

CHAPTER 1. GENERAL PROVISIONS

SECTION 101. Short Title

This Code shall be entitled “Dry Creek Rancheria Tribal Land Leasing Code”.

SECTION 102. Purpose and Applicability

(A) The purposes of this Code is to:

- (1) Recognize the authority of the Dry Creek Rancheria to issue business site leases, and establish streamlined procedures for environmental review, approval, management and enforcement of leases;
- (2) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Dry Creek Rancheria; and
- (3) Implement the federal *Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2011*, Pub. L. No. 112-151, 126 Stat. 1150. (2012) to promote tribal housing on tribal trust lands.

(B) This Dry Creek Rancheria Tribal Land Leasing Code mandates certain provisions to protect and preserve Dry Creek Rancheria trust land, provisions for trust asset accounting, provisions for record keeping, and title recording, and provisions for modern leasing practices. Accordingly, Chapter 4 of this Code set forth the Tribal land leasing management system.

SECTION 103. Authority

This Tribal Land Leasing Code is adopted pursuant to the authority granted to the **Tribal Council** of the Dry Creek Rancheria pursuant to its reserved powers under Article 4 of the Articles of Association.

SECTION 104. Definitions

For purpose of this Code:

(A) “Assignment” means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee’s rights and assumes all the lessee’s obligations under a business site lease.

(B) “Approving Entity” means the governmental entity that has statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Dry Creek Rancheria, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases and lease terminations. This *Dry Creek Rancheria Tribal Land Leasing Code of 2013* gives the Board of Directors the power to act in the capacity of the Approving Entity, subject to final ratification by the Dry Creek Rancheria **Tribal Council**.

(C) “Best Interest of the Dry Creek Rancheria” means the balancing interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Dry Creek Rancheria trust land, increasing employment and jobs on the Dry Creek Rancheria, and preserving the sovereignty of the Dry Creek Rancheria.

(D) "Bond" means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or by a third-party surety.

(E) "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.

(F) "Business Site Lease" means any lease for a business purpose issued upon Dry Creek Rancheria Trust land under the authority of 25 U.S.C. §415.

(G) "Change in Land Use" means the change from residential to non-residential, commercial to industrial, or one industrial to another that significantly differs from the former use.

(H) "Development Period" means the time period from when a lease is executed to when improvements are expected to be substantially completed.

(I) "Economic Development Committee (EDC)" means the Dry Creek Rancheria Board of Directors ("Board") that has the authority to recommend, review and manage business site leases, and has authority to delegate some or all of its statutory authority to agencies or entities within the Dry Creek Rancheria.

(J) "Environmental Reviewer" is the employee of the Tribe that has the authority set forth in §804, which authorities are provided pursuant to this Code.

(K) "Equity" means value of a business or a property, over and above the indebtedness against it, and includes tangible and intangible assets, including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure, and equipment.

(L) "Executing Official" means the Dry Creek Rancheria Tribal Chairman who shall execute all business site leases on the Dry Creek Rancheria and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases, after final ratification by the Dry Creek Rancheria **Tribal Council**.

(M) "Fair annual lease value" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

1. Lessee and lessor are typically motivated;
2. Both parties are well-informed or well-advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and

5. the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

(N) "Human Environment" means the connection between the people and their environment.

(O) "Interested party" means a person whose interest is adversely affected by the Managing Entity's leasing decision.

(P) "Lease" means a written agreement or contract between the Lessor and a Lessee wherein the lessee is granted a right to possess Dry Creek Rancheria trust land for a specific purpose and duration, a "Lease" also means a business lease, permits and licenses granting land use privileges in Dry Creek Rancheria trust land for business purposes. The written contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.

(Q) "Leasing Decision" in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Approving Entity: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer and tenant leases.

(R) "Lessee" means a person to whom property (Dry Creek Rancheria trust land) is leased under a Lease. One who has the right to use or occupy a property under a lease agreement, e.g., the leaseholder or tenant.

(S) "Lessor" means the Dry Creek Rancheria who holds property title and conveys the right to use and occupy the property under a lease agreement.

(T) "Managing Entity" means the Board of Directors or other tribal governmental entity that has been delegated authority by the Board of Directors to manage all business site leases, in accordance with an approved Tribal land leasing management plan.

(U) "Mortgage" means a written instrument that creates a lien upon real estate encumbered in a business site lease as security for the payment of a specified debt.

(V) "Dry Creek Rancheria" means the Dry Creek Rancheria Tribal Government.

(W) "Dry Creek Rancheria Environmental Review" (DCRER) comprises all of the documents relevant to the Environmental Review Process for a specific Leasing Decision. The Record is maintained by the Environmental Reviewer, and will be provided to the Managing Entity and the Approving Entity.

(X) "Dry Creek Rancheria tribal law" means the body of law governing the land and activities occurring within the jurisdiction of the Dry Creek Rancheria.

(Y) "Dry Creek Rancheria trust land" means the surface estate of land or any interest therein held by the United States in trust for the Dry Creek Rancheria; land held by the Dry Creek

Rancheria and subject to federal restrictions against alienation or encumbrance, and reserved for federal purposes; and land held by the United States in trust for Dry Creek Rancheria corporation chartered under Section 17 of the *Indian Reorganization Act*.

(Z) "OST" means the Office of Special Trustee for American Indian, U.S. Department of the Interior.

(AA) "Permit" means a written agreement between the Dry Creek Rancheria and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable use privilege to use Dry Creek Rancheria trust land for a specified purpose.

(BB) "Petition" means a written request submitted to the Secretary, after exhaustion of tribal remedies, for the review of an action (or inaction) of the Dry Creek Rancheria that is claimed to be in violation of the approved tribal leasing regulations.

(CC) "Secretary" means the Secretary of Interior, U.S. Department of Interior, or its authorized representative.

(DD) "Sublease" means a written agreement by which the lessee grants a person a right of possession no greater than that held by the lessee under a business site lease.

(EE) "Surety" means one who guarantees the performance of another.

SECTION 105. Effective Date

This Code shall take effect upon approval by the the Secretary or authorized designee.

SECTION 106. Approval

The Lessor may issue a business site lease or permit, which is subject to approval from the Approving Entity and execution from the Executing Official, after final ratification by the **Tribal Council** so long as the lease complies with this Code, and is in the Best Interest of the Dry Creek Rancheria

SECTION 107. Choice of Law

All disputes over leases shall be resolved under the laws of the Dry Creek Rancheria. Nothing in this Code shall be construed to waive the Dry Creek Rancheria's sovereign immunity.

SECTION 108. Duration and Renewal

The term of the Lease shall not exceed 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The lessee shall notify the Managing Entity of the intent to renew, at least one year before the lease is due to expire.

CHAPTER 2. OBTAINING A BUSINESS SITE LEASE

SECTION 201. Information

Information on obtaining Business Site Leases shall be available at the Dry Creek Rancheria tribal offices.

SECTION 202. Supporting Documents

All applicants for Business Site Leases shall submit the following documents to the Managing Authority who shall compile all documents for final review by the Approving Authority:

1. Financial Statements
2. Site survey and legal description, if applicable;
3. Tribal environmental review where required;
4. Other documents as may be required by the Approving Authority and pursuant to the Tribal land leasing procedures.

SECTION 203. Minimum Provisions

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

1. The tract, location, or parcel of the land being leased;
2. The purpose of the Lease and authorized uses of the leased premises;
3. The parties to the Lease;
4. The term of the Lease;
5. Identification of the responsible party for constructing, owning, operating, and maintaining any improvements of the leased premises;
6. Indemnification of the United States and Lessor;
7. Payment requirements, including late payments and interest; and
8. Due diligence, insurance and bonding requirements as provided in this Code.

SECTION 204. Records

1. The Approving Entity shall record Business Site Leases, Subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with:

Land Title and Records Office
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

2. The Managing Entity is responsible for maintaining a copy of all recorded Business Site Leases, Subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations, and for disseminating copies of same to the Tribal Board of Directors, the Tribal Department of Public Works, and if required by the **Tribal Council**, the Tribal Housing Department.
3. The Approving Entity shall send a copy of all recorded Business Site Leases, amendments and renewals for information only to:

Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814.

SECTION 205. Ownership of Records

Records of activities taken pursuant to this Code are the property of the United States, the Tribe and its subordinate governmental entities. Records compiled, developed, or received by the Tribe in the course of business with the Secretary are the property of the Tribe.

SECTION 206. Tribal Preference

Unless the Business Site Lease states otherwise, a Lease may include, consistent with Tribal law, a provision to give Indian preference in hiring for employment purposes.

CHAPTER 3. BUSINESS SITE LEASE REQUIREMENTS

SECTION 301. Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in the Dry Creek Business Site Lease Agreement or equivalent document. The standard terms and conditions may be modified only with the approval of the Approving Authority. The Lessee is responsible for understanding these terms and conditions.

SECTION 302. Duration and Renewal

The term shall not exceed 25 years, except that any such Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Managing Entity of its intent to renew at least one year before the Lease is due to expire.

SECTION 303. Space Leases

To the extent these leases require approval pursuant to federal laws and policies, Space Leases shall be reviewed and approved pursuant to this Code. Space Leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

SECTION 304. Land Descriptions

Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems.

SECTION 305. Appraisals

1. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Approving Authority utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease date of comparable sites or by similar methodology as approved by the Approving Authority and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.
2. Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.

SECTION 306. Fair Annual Lease Value

1. No Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
 - a. The Lease is in the Development Period;
 - b. The Approving Authority is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, or lease abatements to attract such businesses; or
 - c. The Approving Authority determines such action is in the Best Interest of the Tribe.
2. A Lease may be structured at a flat lease rate.

3. A Lease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee is a business located in a shopping center or mall, or the Lessee generates over \$1,000,000 in gross receipts.
4. A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.
5. A Lease must specify the dates on which all payments are due.
6. A Lease must specify that the Lessee shall make payments directly to the Managing Authority.
7. Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date.
8. The Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the Lease or the contribution value of such improvements.
9. Leases for terms of less than five years may be structured to allow for lease rate adjustments. The Lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
10. Lease may be amended to allow for lease rate adjustments.
11. The Managing Authority shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any Lease file.

SECTION 307. Environmental Review Process

Unless exempted from this requirement under this Code, the Approving Authority shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Chapter 8 of this Code. Leases approved and executed without complying with this Section shall be null and void.

SECTION 308. Performance Bond

1. Subject to paragraph 2 of this Section 308, the Lessee shall obtain a performance bond, satisfactory to the Approving Authority, in an amount sufficient to secure the contractual obligations of the Lease and guarantee the following:

- a. The annual lease payment;
 - b. The estimated development cost of improvements to the leased premises; and
 - c. Any additional amount necessary to ensure compliance with the Lease.
- 2. The Approving Authority may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Managing Authority shall maintain written records of waivers and reductions.
- 3. The performance bond may be in one of the following forms:
 - a. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - b. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
 - c. Negotiable Treasury securities; or
 - d. Surety bonds issued by a company approved by the U.S. Department of the Treasury.
- 4. Upon written approval by the Tribal Board, the Approving Authority may accept an alternative form of security that provides adequate protection for the Tribe, including without limitation an escrow agreement and assigned savings account.

SECTION 309. Insurance

- 1. Subject to paragraph 2 of this Section 309, the Lessee shall obtain, and maintain throughout the term of the Lease, insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the State of California. Such insurance shall:
 - a. Protect the interests of the Lessor and the United States, and be in amounts sufficient to protect all insurable improvements on the leased premises;
 - b. Include, without limitation, property, liability and casualty insurance, including, personal injury or death, business interruption coverage when required by the Approving Authority, and such other insurance as specified in the Business Site Lease; and
 - c. Expressly identify the Lessor and the United States as additional insureds.
- 2. The Approving Authority may waive the requirement for insurance if such waiver is determined by the Tribal Board to be in the Best Interest of the Tribe. The waiver may be revoked at any time if it is later determined to no longer be in the Best Interest of the Tribe.

SECTION 310. Improvements

1. Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease under the following circumstances:
 - a. All Business Site Leases shall specify, or provide for the development of:
 - i. A plan that describes the type and location of any improvements to be built by the Lessee; and
 - ii. A general schedule for construction of the improvements.
 - b. All Business Site Leases shall require the Lessee to exercise diligence and use its best efforts in prosecuting the work to completion of any improvements within the schedule specified in the Business Site Lease.
 - c. Lessee shall provide the Managing Authority written justification as to the nature of any delay, the anticipated(s) date of construction of the improvements, and evidence of progress toward completion of construction.
 - d. When requested by the Managing Authority or otherwise required in the Business Site Lease, Lessee shall further provide the Managing Authority, in writing, an updated schedule of construction.
 - e. Failure of Lessee to comply with these requirements will be deemed a breach of the Business Site Lease and may lead to termination of the Lease pursuant to Chapter 5 of this Code.
2. Improvements to the premises shall become the property of the Approving Authority unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such removal.
3. A Lessee may develop equity value in the improvements and sell its interest in the Business Site Lease base on the equity value. The Approving Authority has a right of first refusal to purchase such interest.
4. The Business Site Lease may provide that at the time of expiration, cancellation or termination of the Lease, the Lessor shall purchase improvements to the premises at the fair market value at such time.
5. Improvements may be subject to taxation by the Tribe as provided by Tribal law.

SECTION 311. Subleases, Assignments, Amendments and Encumbrances

1. Subleases, assignments, amendments and encumbrances of any Business Site Lease shall be by written consent of the Approving Authority and Lessee, unless otherwise provided herein.
2. Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Approving Authority and execution from the Executing Official, provided a copy of the sublease or assignment is provide to the Approving Authority within 30 days after execution and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - a. There is no event of default under the Business Site Lease or violation of this Code;
 - b. Any restrictions and use limitations respecting the use of the leased premises shall continue to apply to any sublessee or assignee;
 - c. The proposed sublessee or assignee submits a current financial statement showing financial adequacy
 - d. The assignee agrees in writing to assume all of the obligations and conditions of the Lease; and
 - e. The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

Nothing in this Section 311.2 shall relieve the parties from carrying out their respective obligations under the Business Site Lease, which may contain additional restrictions and conditions.

3. The Lease may authorize encumbrances of the leasehold interest for the purpose of financing the development and improvement of the leased premises, subject to written approval by the Approving Authority.
4. If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the lease without approval of the Approving Authority or Lessee, provided 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 encumbrancer, approval by the Approving Authority and execution by the Executing Official is required, provided the purchaser agrees in writing to be bound by all the terms and conditions of the Lease.

CHAPTER 4. BUSINESS LEASE MANAGEMENT

SECTION 401. Management

1. Except where required otherwise by agreement or applicable law, the Managing Entity shall manage all Business Site Leases pursuant to this Code.

2. The Managing Entity shall institute a Tribal land leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

SECTION 402. Accounting

1. The Managing Entity shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and dates of when rate adjustments should be made.
2. The system shall include the following information: name of Lessee, Business Site Lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.
3. The Managing Entity shall provide an annual accounting to the Tribal Board.

SECTION 403. Administrative Fees

The Managing Entity may charge administrative fees for costs associated with issuing a Lease, sublease, assignment, amendment, mortgage or other administrative transactions.

CHAPTER 5. ENFORCEMENT

SECTION 501. General

The Managing Entity shall have powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants consistent with the Tribal land leasing management plans, including the power to enter the leased premises at any time in the case of emergency and otherwise at reasonable time after reasonable notice for the purpose of inspecting the condition of the premises and for verifying compliance by the Lessee with Lease, and to assess penalties and late payments.

SECTION 502. Defaults

1. If the Managing Entity determines the Lessee is in default, the Managing Entity shall notify the Tribal Board of Directors who will verify the information and send the Lessee a notice of default within five business days of such determination. The notice of default may be provided by certified mail, return receipt requested. The Approving Entity shall provide a copy of such notice to the Managing Entity prior to sending to the Lessee.
2. Within 10 days after the mailing of a notice of default, the Lessee shall:
 - a. Cure the default and notify the Managing Entity in writing that the default has been cured.

- b. Dispute the Managing Entity's determination that the Lease is in default and explain why the Lease should not be canceled.
- c. Request additional time to cure the default.

SECTION 503. Remedies

1. If the Lessee fails to cure a default within the prescribed period, the Managing Entity may:
 - a. Request cancellation of the Lease by the Approving Entity pursuant to this Code;
 - 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 Tribal land leasing management plan or policy.
2. If the Approving Entity cancels a Business Site Lease, the Managing Entity shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:
 - a. Explain the grounds for 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 premises within 30 days after mailing of the receipt of the cancellation letter, if an appeal is not filed by that time.
3. A cancellation shall become effective 31 days after mailing of a 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 Managing Entity 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.

SECTION 504. 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 Managing Entity, and the failure to pay such amount shall be treated as a breach of the Lease.

SECTION 505. Harmful or Threatening Activities

If a Lessee or other party causes or threatens to cause immediate and significant harm to the leased premises, or undertakes criminal activity thereon, the Managing Entity may take appropriate emergency action, including securing judicial relief.

SECTION 506. Holdover

If a Lessee remains in possession of the leased premises after the expiration or cancellation of a Lease, the Managing Entity shall treat such occupation as a trespass. The Managing Entity shall take action to recover possession and pursue additional remedies. Filing of any action shall be made pursuant to Tribal laws or, alternatively, the Managing Entity may make a written request sent by certified mail to the BIA for resolution under applicable federal laws.

SECTION 507. Trespass

If a person occupies the leased premises without the Managing Entity's approval, the Managing Entity may pursue appropriate remedies, including the filing of a trespass action under Tribal laws to regain possession.

CHAPTER 6. APPEALS

SECTION 601. Appeals

Within 10 days after an adverse determination is made by the Managing Entity, the Lessee or interested party may appeal such determination. An appeal may be brought by filing the following information with the Dry Creek Rancheria Tribal Court or other hearing body as set forth in the Tribal land leasing management plan or policy: 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.

SECTION 602. Appeal Bond

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

SECTION 603. Scope of Review

The Tribal Court shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the Tribal law. The decision of the Tribal Court shall be final.

CHAPTER 7. [RESERVED]

CHAPTER 8. ENVIRONMENTAL REVIEW PROCESS

SECTION 801. General

Unless exempt under this Chapter, the Approving Authority shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Chapter and applicable Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

SECTION 802. Threshold Determination

1. Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Tribe, the Leasing Decision is exempt from additional requirement of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.
2. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to: (i) impact, (ii) alter, (iii) disturb, or (iv) otherwise cause physical disturbances to the biological or natural resources of the Tribe, 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.

SECTION 803. Action on Leasing Decision Subject to Completion of Environmental Review Process.

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Authority may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

SECTION 804. Environmental Review Process

1. Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, before the execution of any Business Site Lease, the Approving Authority shall cause to be prepared a comprehensive and adequate environmental report “(DCRER)”, analyzing the potentially Significant Effect(s) on the Environment of the proposed action; provided that information or data that is relevant to such a DCRER and is a matter of public record or is generally available to the public need not be repeated in its entirety in the DCRER, 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 DCRER shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The DCRER shall provide detailed information about the Significant Effect(s) on the Environment that the Lease is likely to have, and shall include a detailed statement setting forth all of the following:
 - a. A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - b. All Significant Effects on the Environment of the proposed Lease;
 - c. In a separate section:
 - i. Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
 - ii. Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
 - iii. Any mitigation measures proposed, recommended, or required.
2. In addition to the information required pursuant to Section 804 of this Chapter, the DCRER shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the DCRER. In the DCRER, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

SECTION 805. Notice of Completion of Draft DCRER

1. Within no less than 30 days following the completion of the draft DCRER, the Approving Authority shall file a copy of the draft DCRER and a Notice of Completion with the Managing Authority and the Tribe. The Approving Authority shall also post the Notice of Completion and a copy of the draft DCRER on its website. The Notice of Completion shall include all of the following information:
 - a. A brief description of the Project;
 - b. The proposed location of the Project;
 - c. An address where copies of the draft DCRER are available; and

Notice of a period of 30 days during which the Tribe will receive comments on the draft DCRER.

2. To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. § 415, the Approving Authority will provide public notice by at least one of the procedures specified below:
 - a. Publication of the Approving Authority's draft DCRER in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the public of the opportunity to comment on any Significant Effects on the Environment arising as a result of the proposed Project, and proposed or recommended mitigation measures addressing any such impacts.

SECTION 806. Conclusion of Environmental Review Process

Upon review of the Significant Effects on the Environment by the Approving Authority, publication of the draft DCRER, acceptance of the public comment, and consideration of the proposed or recommended mitigation measures addressing any such impacts, the Environmental Review Process concludes and the Approving Authority may approve or disapprove of the proposed Lease, subject to appeal as provided in this Code.

CHAPTER 9. MISCELLANEOUS PROVISIONS

SECTION 901. Severability

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

SECTION 902. Effective Date

1. Effective upon Enactment of Tribal Council. This Code shall be effective upon enactment by the **Tribal Council** and approved by the Secretary of the Interior.
2. Amendments. This Code may be amended by a majority vote of the **Tribal Council** at a duly called **Tribal Council** meeting at which a quorum is present. All substantive amendments to this Code must be submitted to and approved by the Secretary of the Interior.

SECTION 903. Approval

The Tribe may issue a Business Site Lease, which is subject to approval from the Approving Entity, ratification by the **Tribal Council** and execution by the Executing Official, so long as the Lease complies with this Code, and is in the Best Interest of the Tribe.

SECTION 904. Sovereign Immunity Preserved


Nothing in this Code shall be deemed as a waiver of the sovereign immunity of the Dry Creek Rancheria Band of Pomo Indians authorizing suit against the Tribe in any court other than Dry Creek Rancheria Tribal Court, nor shall it be deemed as authorizing a suit for damages against the Tribe in any action arising under this Code, unless the Dry Creek Rancheria **Tribal Council** by specific, express, and unequivocal action should authorize such an action for damages.

CERTIFICATION

The foregoing Tribal Land Leasing Code was presented at a General Membership Meeting held on September 28, 2013, and was approved with a quorum present and such Code has not been rescinded or amended in any way.




Harvey Hopkins
Chairman



Date



Margie Rojas
Secretary/Treasurer



Date