



**Ione Band of Miwok Indians**

**BUSINESS SITE LEASING STATUTE**

**CHAPTER ONE  
INTRODUCTION**

**SECTION:**

**1.1 Authority.** This Statute is enacted pursuant to powers vested in the Tribal Council of the Ione Band of Miwok Indians (as further defined in this Statute, the “Tribe”) under Article VII, Section 1 of the Constitution of the Tribe adopted August 8, 2002 (“Constitution”).

**1.2 Scope.** The scope of application of this Statute shall be limited to all Business Site Leases approved under this Statute governing Leases and Leasehold Mortgages on Tribal Trust Land, and to all actions and decisions taken in connection with those Leases and Leasehold Mortgages. This Statute does not apply to mineral leases or leases of privately held lands, including trust allotments and fractionated interests, nor shall it be construed to limit the Tribe’s ability to enter into leases for Tribal Trust Land for which the Tribe has received Secretarial approval under 25 U.S.C. § 415. Nothing herein shall be construed to affect the terms and conditions of existing leases of Tribal Trust Land.

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

(a) Recognize the authority of the Tribe to review, approve, issue and enforce Business Site Leases and establish streamlined procedures for environmental review;

(b) Promote self-determination, encourage economic self-sufficiency, attract and enable long-term third-party financing, and increase business activity and employment on lands of the Tribe; and

(c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), Pub. L. No. 112-151; 126 Stat. 1150 (codified at 25 U.S.C. § 415(h)).

**1.4 Short Title.** This Statute shall be known and cited as the “Ione Band Business Site Leasing Statute (this “Statute”).”

## CHAPTER TWO DEFINITIONS

### SECTION:

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

(a) “*Applicant*” means a person or persons, business entity or entities, or any other entity that submits a proposal to enter into a Business Site Lease as the Lessee or Leasehold Mortgagee.

(b) “*Assignment*” means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a Business Site Lease.

(c) “*Best Interest of the Tribe*” means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, attract and enable long-term third-party financing, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.

(d) “*BIA*” means the Bureau of Indian Affairs within the United States Department of the Interior.

(e) “*Business Site Lease(s)*” means any Lease, Sublease or Leasehold Mortgage for a business purpose issued upon Tribal Trust Land under authority of this Statute.

(f) “*Development Period*” means the time period between when a Lease is executed and when improvements on the leased premises are expected to be substantially completed.

(g) “*Environmental Review Process*” means the process for conducting tribal environmental review to assess whether a proposed development or Project as defined under this Statute will have a Significant Effect on the Environment.

(h) “*Environmental Reviewer*” means an official from the Tribe’s environmental department or other individual designated by the Tribal Council with responsibility for the Environmental Review Process under this Statute.

(i) “*Fair Annual Lease Value*” means the most probable dollar amount a property should bring in a competitive and open market, or as determined by competitive bidding, reflecting all conditions and restrictions of the specified Business Site Lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations or other

considerations that drive commercial viability of a proposed Project, proposed financing of the Project or development of land, and assuming consummation of the Business Site Lease as of a specified date and the passing of the leasehold from Lessor to Lessee.

(j) “*Ione Band Economic Development Authority*” or “*IBEDA*” means the wholly-owned, unincorporated instrumentality of the Tribe established and approved by the Tribal Council of the Tribe on February 6, 2020.

(k) “*Lease*” means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee’s right to possess will limit the Lessor’s right to possess the leased premises only to the extent provided in the Lease.

(l) “*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 mortgagor and which may allow a Leasehold Mortgagee, pursuant to the terms therein, to assume the Lessee’s leasehold interest upon default under the debt instrument or other obligation.

(m) “*Leasehold Mortgagee*” means the holder of a Leasehold Mortgage.

(n) “*Leasehold Mortgagor*” means the borrower of a Leasehold Mortgage.

(o) “*Leasing Decision*” means the following type of lease transactions that will be acted on by the Tribe: lease and leasehold mortgage issuance, lease amendment or modification, renewals, subleasing, lease assignment or transfer, lease and tenant leases.

(p) “*Lessee*” means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Lease or Leasehold Mortgage pursuant to this Statute.

(q) “*Lessor*” means the Tribe, which exercises governmental power over lands that it holds in trust or which are held in trust or restricted status by the United States for the benefit of the Tribe, and who has the power to and conveys the right to use and occupy the property under a Lease.

(r) “*LTRO*” means the Land Titles and Records Office of the BIA having jurisdiction/responsibility for the Tribal Trust Land.

(s) “NEPA” means the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.

(t) “Notice of Completion” means, for purposes of the Environmental Review Process, the written notification announcing the completion of a draft or final TEA or TEIR.

(u) “Project” means any development activity directly related to a proposed Leasing Decision on Tribal Trust Land that may cause a Significant Effect on the Environment.

(v) “Public” means, for purposes of the Environmental Review Process, any person or entity with the potential to be significantly affected by the Lease or Lease activity.

(w) “Secretary” means the Secretary of the Interior of the United States Department of the Interior.

(x) “Significant Effect(s) on the Environment” means a substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.

(y) “Space Lease” means a lease of space within planned or existing facilities on Tribal Trust Land that is not already leased (i.e., not a Sublease).

(z) “Sublease” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.

(aa) “Sublessee” means a person or entity who has acquired a legal right to possess Tribal Trust Land under the terms of a Sublease.

(bb) “Sublessor” means a person or entity that grants the right to possess Tribal Trust Land under the terms of a Sublease.

(cc) “Tribal” and “Tribe” means the Ione Band of Miwok Indians, a federally recognized Indian tribe.

(dd) “Tribal Council” means the duly elected governing body of the Tribe pursuant to the Constitution of the Tribe adopted August 8, 2002.

(ee) “Tribal Party” and “Tribal Parties” means the Tribe and the IBEDA.

(ff) “*Tribal Trust Land*” means all lands of the Tribe over which the Tribe exercises governmental power that are held in trust or restricted status by the United States for the benefit of the Tribe.

(gg) “*Trust or Restricted Status*” means the United States holds title to the tract of land in trust for the benefit of the Tribe; or the Tribe 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 limitations in federal law.

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

#### **SECTION:**

**3.1 Terms and Conditions.** Business Site Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement or equivalent document. The terms and conditions may be modified only with the approval of the Tribe. The Lessee is responsible for understanding these terms and conditions.

**3.2 Duration and Renewal.** No Business Site Lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such Business Site Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. If an option to renew is provided, the Business Site Lease must specify the time and manner in which the option must be exercised or is automatically effective, any additional consideration due upon the exercise of the option to renew or the start of the renewal term, and any other conditions for renewal.

**3.3 Information for Applicants.** Information on obtaining a Business Site Lease shall be available from the offices of the Tribe.

**3.4 Supporting Documentation from Applicants.** All Applicants for a Lease shall submit the following documentation to the Tribe:

- (a) Any financial information the Tribe deems necessary to determine whether the Applicant can meet the financial obligations of the Lease;
- (b) Site surveys and a legal description;
- (c) If applicable, a development plan and construction schedule for the improvements;
- (d) If applicable, a proposed restoration and reclamation plan;
- (e) Environmental Review Process documents; and

(f) Any other documents as may be required by the Tribe.

**3.5 Minimum Provisions.** All Leases and Subleases shall contain, at a minimum, the following provisions:

(a) The tract, location, or parcel of the land being leased, with a legal description sufficient to meet LTRO recording requirements;

(b) The purpose of the Lease or Sublease and authorized uses of the leased or subleased premises;

(c) The parties to the Lease or Sublease;

(d) The term and effective date of the Lease or Sublease;

(e) Identification of the responsible party for constructing, owning, operating, maintaining and removing any improvements to the leased premises;

(f) Indemnification of the United States and Lessor as provided in this Chapter.

(g) Payment requirements, including (but not limited to):

(i) The amount of rent owed;

(ii) Acceptable form(s) of payment;

(iii) The dates on which all payments are due;

(iv) That payments shall be made directly to the Tribe;

(v) Interest and late payment penalties; and

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

(h) Due diligence, insurance and bonding requirements as provided in this Chapter;

(i) Default provisions;

(j) Dispute resolution mechanisms;

(k) If the leased or subleased premises are within an Indian irrigation project or drainage district, a Lease or Sublease must contain the following provision: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. Part 271, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The

Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district;” and

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

### **3.6 Fair Annual Lease Value**

(a) A Lease or Sublease constitutes Fair Annual Lease Value under conditions whereby:

- (i) Lessee and Lessor are equally motivated to consummate the Lease under the particular market conditions applicable to the transaction;
- (ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
- (iii) A reasonable time is allowed for exposure in the open market;
- (iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and
- (v) The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

(b) No Lease or Sublease shall be approved for less than the present Fair Annual Lease Value, except as follows in which case no appraisal shall be required:

- (i) The Lease or Sublease is in the Development Period; or
- (ii) The Tribe is providing an incentive for businesses to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
- (iii) The Tribe determines that negotiated Lease or Sublease payments of less than Fair Annual Lease Value are in the Best Interest of the Tribe; or
- (iv) The Lease or Sublease is between the Tribe and the IBEDA; or
- (v) The Lease or Sublease is between a Tribal Party, on the one hand, and a lender to a Tribal Party, on the other hand, and the Lease or Sublease payments are determined in writing to be in the Best Interest of the Tribe.

(c) A Lease or Sublease may be structured at a flat lease rate.

(d) A Lease or Sublease may be structured at a flat lease rate plus a percentage of gross receipts, if the Lessee or Sublessee is a business located in a shopping center or mall, or the lessee generates over One Million Dollars (\$1,000,000.00) annually in gross receipts.

(e) A Lease or Sublease may be structured based on a percentage of gross receipts or based on a market indicator.

(f) The Lease or Sublease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(g) Leases or Subleases may be structured to allow for lease rate adjustments, including automatic annual rate adjustments. If such rate adjustments are not automatic, the Lease or Sublease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

(h) Leases or Subleases may be amended to allow for lease rate adjustments.

(i) The Tribe 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.

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

(a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribe utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Tribe 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.

(b) Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.

**3.8 Land Descriptions.** Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems, include acreage per tract if tract lines are crossed, and shall be sufficient for recording with the LTRO. Space Leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

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

**3.10 Indemnification.** The Lease must contain the following provisions:

(a) The Lessee holds the United States and the Lessor harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises."

(b) The Lessee indemnifies the United States and the Lessor against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the Lease term, regardless of fault, with the exception the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

**3.11 Insurance.**

(a) A Lessee shall provide insurance necessary to protect the interests of the Lessor and in amounts sufficient to protect all insurable improvements on the premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.

(c) The Tribe and the United States must be identified as additional insured parties.

(d) The Lessor may waive this requirement if the waiver is in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

**3.12 Performance Bond.**

(a) Unless waived in writing by the Lessor in accordance with this

Section, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the Lessee's contractual obligations under the Business Site Lease and may guarantee:

- (i) The annual lease payment;
- (ii) The estimated development cost of improvements; and
- (iii) Any additional amount necessary to ensure compliance with the Lease.

(b) The performance bond must require the surety to provide advance notice of at least 60 days to the Lessor before cancelling the performance bond. Upon receipt of such notice, the Lessor shall notify the Lessee of its obligation to provide a substitute performance bond before the cancellation date. The obligations of the Lessee and its sureties to the Lessor will be enforceable by the United States so long as the land remains in Trust or Restricted Status.

(c) The performance bond may be in one of the following forms:

- (i) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (ii) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (iii) Negotiable Treasury securities; or
- (iv) Surety bond issued by a company approved by the U.S. Department of the Treasury.

(d) The Lessor may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribe shall maintain written records of waivers and reductions.

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

(a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:

- (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
- (ii) a general schedule for construction of the improvements.

(b) Lessee shall provide the Lessor written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

(c) When requested by the Lessor or otherwise required in the Business Site Lease, Lessee shall further provide the Lessor, in writing, an updated schedule for construction.

(d) Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site Lease pursuant to Chapter 5 of this Statute.

(e) Improvements to the premises shall become the property of the Lessor unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall specify, unless waived by the Lessor, the maximum time allowed for such removal, the Lessee's responsibility for such removal, and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Lessor.

(f) A Lessee may develop equity value in the improvements and sell its interest in the Business Site Lease based on the equity value. The Lessor has a right of first refusal to purchase the interest.

(g) The Business Site Lease may provide that upon the forced cancellation or termination of the Business Site Lease, the Lessor shall not be required to purchase improvements to the premises at fair market value and that the value of any such improvements can be used to offset the loss of value to the Tribe from the forced cancellation or termination of the Business Site Lease if the Tribe determines that it is in the Best Interest of the Tribe to do so.

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

### **3.14 Subleases, Assignments, Amendments and Encumbrances.**

(a) Subleases, Assignments, amendments or encumbrances of any Business Site Lease shall require the prior written consent of the Tribe to be effective, except as otherwise provided in this Section 3.14.

(b) Business Site Leases may authorize Subleases and Assignments, in whole or in part, without written consent of the Tribe, provided a copy of the Sublease or Assignment is provided to the Tribe within ten (10) business days after execution by all parties thereto and the following conditions, where applicable, are stated in the Lease and satisfied:

(i) There is no event of default under the Business Site Lease and the Lessee is in compliance with this Statute;

(ii) Any restrictions and/or limitations on the use of the premises under the terms of the Lease shall continue to apply to any sublessee or assignee;

(iii) In the case of an Assignment, the assignee (A) agrees in writing to assume all of the obligations and conditions of the Lease that are to be assigned and (B) submits to the Tribe, if requested and prior to the intended effective date of the Assignment, a current financial statement showing financial ability to perform the Lease obligations as and to the same extent as the Lessee; and

(iv) In the case of a Sublease, the Lessee shall not be relieved or released from any of its obligations under the terms of the Lease.

Nothing in this subdivision (b) shall relieve the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

(c) The Lease may authorize encumbrances to the leasehold interest including, but not limited to, a Leasehold Mortgage, for the purpose of securing financing to develop, improve and/or operate the premises, subject to the prior written approval of the Tribe. A mortgage, deed of trust, or other instrument that pledges a person or entity's subleasehold interest in a Sublease shall not require Tribal approval unless otherwise provided in the subject Lease. An encumbrance of the beneficial interest of the Tribe or the fee interest of the United States in the Tribal Trust Land shall not be approved or consented to by the Tribe and is prohibited as a matter of federal law.

(d) An encumbrance of a leasehold interest, including, but not limited to, a Leasehold Mortgage for the purpose of securing third-party financing, may include provisions providing the encumbrancer with a right to exclusive possession and occupancy of the premises upon default under the financing documents, without need for commencement of foreclosure proceedings under tribal or state law

(e) If an encumbrancer's right to exclusive possession and occupancy of the premises upon default under the financing documents occurs, or if a sale or foreclosure of the Lessee's leasehold interest under a Lease occurs and:

(i) The encumbrancer is also the purchaser, the encumbrancer may assign the Lease without approval of the Tribe, provided the assignee agrees, in writing, to be bound by all the terms and conditions of the Lease;

(ii) The encumbrancer is also the purchaser, the encumbrancer may Sublease the leasehold estate represented by the Lease without the approval of the Tribe, provided the encumbrancer agrees, in writing, to be bound by all the terms and conditions of the Lease; or

(iii) If the purchaser is a party other than the encumbrancer, approval by the Tribe will be required before a Lease can be so assigned or subleased, and the purchaser shall agree, in writing, to be bound by all terms and conditions of the Lease.

**3.15 Indian 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.

**3.16 Records.**

(a) The Tribe shall forward all approved Business Site Leases, Subleases, Assignments, amendments, encumbrances, renewals, modifications and cancellations to the Superintendent of the Central California Agency of the BIA for filing and recordation with the LTRO.

(b) The Tribe is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease documents to the Tribal Council Secretary and any other Tribal department or representative specified by the Tribal Council.

(c) For a Lease that provides for rental payment directly to the Tribe, the Tribe shall provide documentation of the Lease payments to the Superintendent of the Central California Agency of the BIA that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.

(d) Records of activities taken pursuant to this Statute are the property of the Tribe. Records compiled, developed, or received by the BIA or the Secretary in the course of business with the Tribe are the property of the United States.

**CHAPTER FOUR  
BUSINESS SITE LEASE MANAGEMENT**

**SECTION:**

**4.1 Management.**

(a) Except where required otherwise by agreement consistent and in accordance with this Statute and applicable law, the Tribe shall manage all Business Site Leases pursuant to this Statute and the Lease.

(b) The Tribe shall institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies, consistent with the provisions of this Statute.

**4.2 Administrative Fees.** The Tribe may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, leasehold mortgage or other administrative transaction.

## **CHAPTER FIVE ENFORCEMENT**

### **SECTION:**

**5.1 Generally.** The Lessor, Sublessor, Leasehold Mortgagee, as applicable, and the Secretary shall have all powers necessary and proper to enforce the terms of an approved Lease, Sublease or Leasehold Mortgage pursuant to this Statute and federal law, and any other Tribal laws, ordinances, regulations, rules, policies, and covenants, consistent with the Tribe's business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, assess late payments, and file trespass claims or unlawful detainers.

### **5.2 Defaults.**

(a) Unless otherwise specified in the Business Site Lease, if the Lessor, Sublessor or Leasehold Mortgagee determines the Lessee, Sublessee or Leasehold Mortgagor, as applicable, is in default, the Lessor, Sublessor or Leasehold Mortgagee shall send the Lessee, Sublessee or Leasehold Mortgagor, as applicable, a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested, or other trackable method of delivery.

(b) Unless other specified in the Business Site Lease, within ten (10) business days of the mailing, the Lessee, Sublessee or Leasehold Mortgagor shall:

(i) Cure the default and notify the Lessor, Sublessor or Leasehold Mortgagee in writing that the default has been cured.

(ii) Dispute the Lessor's, Sublessor's or Leasehold Mortgagee's determination that the Lease, Sublease or Leasehold Mortgage is in default and explain why the Lease or Sublease should not be canceled or the exercise of default remedies under the Leasehold Mortgage should not be available; or

(iii) Request additional time to cure the default, specifically describing the need for additional time.

For the avoidance of doubt, the procedures and requirements of this Section 5.2 are applicable only to the extent the Business Site Lease does not otherwise specify different default provisions.

If the Tribe deems it in its Best Interest to negotiate alternative default provisions in a particular Lease it may waive the procedures and requirements of Section 5.2.

### **5.3 Remedies.**

(a) If the Lessee, Sublessee or Leasehold Mortgagor fails to cure the

default within the prescribed period, the Lessor, Sublessor or Leasehold Mortgagee may:

- (i) Cancel the Lease or Sublease, or foreclose on the Leasehold Mortgage, pursuant to either the terms of the applicable Business Site Lease or this Statute;
- (ii) Grant an extension of time to cure the default;
- (iii) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
- (iv) Exercise any combination of remedies listed above; or
- (v) Exercise any other remedy set forth in the Business Site Lease.

(b) If the Lessor or Sublessee cancels a Business Site Lease, the Tribe shall send the Lessee or Sublessee, as applicable, a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee or Sublessee by certified mail, return receipt requested, or other trackable method of delivery. The cancellation letter shall:

- (i) Explain the grounds for cancellation;
- (ii) Notify the Lessee or Sublessee of unpaid amounts, interest charges or late payment penalties due under the Lease or Sublease;
- (iii) Notify the Lessee or Sublessee of its right to appeal; and
- (iv) Order the Lessee or Sublessee to vacate the premises within thirty-one (31) calendar days of the date of receipt of the cancellation letter if an appeal is not filed by that time.

(c) A cancellation shall become effective thirty-one (31) calendar days after Lessee's or Sublessee's receipt of the cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the Lessee or Sublessee shall make all requisite payments, as well as comply with the terms of the Lease or Sublease.

(d) If the Lessor or Sublessor decides to grant an extension of time to cure a default, the Lessee or Sublessee shall proceed diligently to perform and complete the corrective actions within the time period designated by the Lessor or Sublessor.

(e) If a Leasehold Mortgagee sends notice of foreclosure to a Leasehold Mortgagor pursuant to a Leasehold Mortgage, such notice shall be sufficient to confer an automatic possessory interest to such Leasehold Mortgagee without any further action or proceeding pursuant to tribal law, statute, regulation, rule or otherwise.

For the avoidance of doubt, the procedures and requirements of this Section 5.3 are applicable only to the extent the Business Site Lease does not otherwise specify different remedy provisions. If there (i) is any conflict between the language of this Section 5.3

and the language of the Business Site Lease or (ii) are alternate remedies provisions in the Business Site Lease, the Business Site Lease shall control.

**5.4 Penalties.** The Business Site Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Business Site 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 or Sublessee from the Lessor or Sublessor, and the failure to pay such amount shall be treated as a breach of the Lease.

**5.5 Harmful or Threatening Activities.** If a Lessee, Sublessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes illegal activity thereon, the Lessor or Sublessor may take reasonable and appropriate emergency action. The Lessee or Sublessee must comply with all applicable laws, rules, ordinances, and other legal requirements.

**5.6 Holdover.** If a Lessee or Sublessee remains in possession after the expiration or cancellation of a lease, the Lessor or Sublessor shall act to remedy the holdover situation. The Lessor or Sublessor shall take action to recover possession and pursue any additional remedies under applicable law, including, but not limited to, a forcible entry and detainer action. Filing shall be pursuant to Tribal laws, or alternatively, the Lessor or Sublessor may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

**5.7 Trespass.** If a person takes possession of uses Tribal Trust Lands without an approved Business Site Lease or other lawful right, the Tribe may pursue appropriate remedies to recover possession, including, but not limited to, the filing of a trespass action under Tribal law.

## **CHAPTER SIX APPEALS**

### **SECTION:**

**6.1 Appeals.** Unless an alternative dispute resolution process is provided in a Business Site Lease, the Lessee, Sublessee, Leasehold Mortgagor or interested party may appeal a determination of the Lessor, Sublessor or Leasehold Mortgagee within ten (10) business days of the determination. Appeals may be filed with the Tribal Council. Such appeals shall be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

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

**CHAPTER SEVEN  
ENVIRONMENTAL REVIEW PROCESS**

**SECTION:**

**7.1 Generally.** Unless exempt under this Chapter, the Tribe shall not approve a Business Site Lease until the Environmental Review Process pursuant to this Chapter is completed. Business Site Leases approved and executed without compliance with this Chapter shall be null and void.

**7.2 Threshold Determination.**

**(a) Not Subject to Environmental Review Process.** If the Environmental Reviewer determines that the Leasing Decision would not result in a physical disturbance to the environment, and therefore does not have the potential to have a Significant Effect on the Environment, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental law and regulations.

**(b) Subject to Environmental Review Process.** Conversely, if the Environmental Reviewer determines that the Leasing Decision may impact, alter, or otherwise cause a direct or indirect physical disturbance to the environment, and therefore has the potential to have a Significant Effect on the Environment, , the Applicant must fulfill the requirements of the Environmental Review Process.

**(c) Exemption for Prior Analysis:** Projects that are the subject of a completed federal environmental review under NEPA shall be exempt from the Environmental Review Process, and the Tribe shall not be required to prepare a TEA or TEIR under Section 7.4 of this Chapter.

**(d) Subject to Federal Environmental Review.** If the Project is subject to federal environmental review under NEPA, the Tribe shall not approve a Business Site Lease until the federal agency responsible for the proposed action has completed the environmental review under NEPA and issued a final determination pursuant to federal law.

**7.3 Action on Leasing Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Tribe may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process.

**7.4 Environmental Review Process.**

**(a) Preparation of a TEA or TEIR.** Unless an exemption applies,

then, before the approval of any Business Site Lease, the Tribe shall cause to be prepared a comprehensive and adequate Tribal environmental assessment (“TEA”) or Tribal environmental impact report (“TEIR”), analyzing the potentially significant effects of the Project on the environment; provided, however, that information or data which is relevant to such a TEA or TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEA or TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEA or TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building.

(b) **Contents of a TEA.** The TEA shall provide sufficient information about potential environmental impacts of the proposed Project and include a detailed statement setting forth each of the following:

(i) A description of the physical environmental conditions for the proposed Project (the environmental setting and existing baseline conditions), as they exist at the time of the commencement of the TEA;

(ii) A reasoned determination of either (A) no Significant Effect on the Environment, in which case no further assessment is required, or (B) likely Significant Effect(s) on the Environment of the proposed Project, in which case a statement of:

- (1) Any likely Significant Effect on the Environment that cannot be avoided if the Lease is executed;
- (2) Any likely Significant Effect on the Environment that would be irreversible if the Lease is executed; and
- (3) Any mitigation measures proposed or recommended to minimize or eliminate potential impacts of the Project on the environment;
- (4) Any mitigation measures required to reduce the impact of any identified Significant Effect(s) on the Environment to a less than significant level.

(c) **Contents of TEIR.** If the TEA results in a determination of likely Significant Effect(s) on the Environment that cannot be avoided or mitigated to a less than significant level, or if the Environmental Reviewer independently determines the proposed action will likely result in Significant Effect(s) on the Environment, the Tribe shall cause to be prepared a TEIR analyzing the potentially Significant Effect(s) on the Environment which the Lease is likely to have, shall list ways in which the Significant Effect(s) on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(i) A description of the physical environmental conditions in the vicinity of the proposed Project (the environmental setting and existing

baseline conditions), as they exist at the time of the commencement of the TEIR;

(ii) All Significant Effect(s) on the Environment of the proposed Project;

(iii) In a separate section:

(1) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;

(2) Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and

(3) Any mitigation measures proposed, recommended, or required to lessen, reduce the impact of, or eliminate any identified Significant Effect(s) on the Environment.

(d) **Discussion of Significant Effects.** In the TEA and TEIR, the direct and indirect Significant Effect(s) on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The TEIR shall also include a statement indicating the reasons for determining that various effects of the proposed Project on the environment are not significant and consequently have not been discussed in detail.

## 7.5 Notice of Completion.

(a) **Posting and Contents of Notice.** Within no less than thirty (30) days following the completion of the draft TEA or TEIR, the Tribe shall post a Notice of Completion and a copy of the draft TEA or TEIR in the offices of the Tribe. The Notice of Completion shall include all of the following information:

- (i) A brief description of the Project;
  - (ii) The proposed location of the Project;
  - (iii) An address where copies of the TEA or TEIR are available;
- and
- (iv) Notice of a period of at least thirty (30) days during which the Tribe will receive comments on the draft TEA or TEIR.

(b) **Publication of Notice.** The Public shall be provided the Notice of Completion pursuant to each of the methods specified below:

(i) Publication of the Notice of Completion 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 Effect on the Environment of the proposed action.

(ii) Posting of the Notice of Completion in the offices of the Tribe and a publicly accessible website with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

**7.6 Response to Public Comments.** After the comment period of at least thirty (30) days has ended, the Tribe will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Tribe will provide responses to relevant and substantive public comments on any Significant Effect on the Environment arising from the proposed Project and proposed or recommended mitigation measures addressing any such impacts. The Tribe's written responses will be posted in the offices of the Tribe with notice to the Public by means of a publicly accessible website. The Tribe shall cause to be prepared a final TEA or TEIR, which incorporates in whole, or includes a summary of, the comments received and responses to comments received on the draft TEA or TEIR.

## **CHAPTER EIGHT SOVEREIGN IMMUNITY**

### **SECTION:**

**8.1 No Waiver.** Nothing in this Statute shall be deemed to waive the sovereign immunity of the Tribe or any of its departments, entities, enterprises or instrumentalities, officers, agents, or employees.

## **CHAPTER NINE EFFECTIVE DATE; AMENDMENT; SEVERABILITY**

### **SECTION:**

**9.1 Applicable Law.** Business Site Leases approved under this Statute are subject to applicable Tribal and federal laws and any other laws specified by the parties in the Business Site Lease.

**9.2 Amendment.** This Statute 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 Statute must be submitted to and approved by the Secretary.

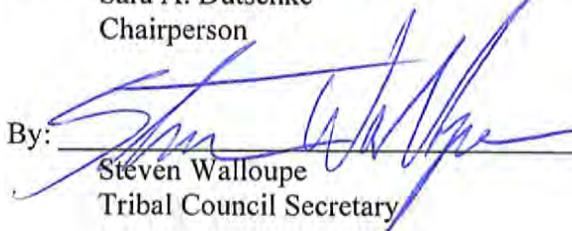
**9.3 Severability.** In the event any provision or part of this Statute is found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions of this Statute shall not in any way be impaired or affected thereby and shall remain in full force and effect.

**9.4 Effective Date.** This Statute shall take effect upon its adoption by the Tribal Council and approval by the Secretary.

**CERTIFICATION**

We, the undersigned duly elected officials of the Ione Band of Miwok Indians, certify that the foregoing Ione Band Environmental Protection Statute was adopted by the Tribal Council pursuant to Resolution No. 2024-03 at a duly called meeting of the Tribal Council on this 8th day of February, 2024, at which a quorum was present, by a vote of 5 yes, 0 no, 0 abstentions.

By:   
Sara A. Dutschke  
Chairperson

By:   
Steven Walloupe  
Tribal Council Secretary