



Rincon Band of Luiseño Indians

Land Assignment Ordinance

Adopted June 02, 2009

Revised November 30, 2010

RINCON BAND OF LUISEÑO INDIANS LAND ASSIGNMENT ORDINANCE

ARTICLE I – PURPOSE

All Tribal Lands within the boundaries of the Rincon Reservation shall be for the use of the General Membership and their immediate family members as defined under this Ordinance. All Tribal Trust Lands and all future Tribal Trust Lands as may be hereafter added thereto, designated for purposes of Assignments, are and will be under the jurisdiction of the General Membership. The issuance of Tribal Assignments to Band Members and members of their immediate families will preserve the future of the Band by encouraging Band Members to return to the Reservation and encourage those holding Assignments to enhance and protect Tribal Lands. Assignments of Tribal Trust Lands will allow the Band to maintain customs and traditions and to protect our heritage and ancestral lands. Land Assignments will provide home sites to Band Members and their immediate families and will strengthen family ties. The objective of this Ordinance is to establish uniform policies and procedures for the Assignment of Tribal Lands on the Rincon Indian Reservation. The provisions of this Ordinance are intended to meet the land needs of Band Members and their immediate family members by providing home sites while preserving and protecting existing Assignment holders and the long-term interest in Tribally controlled lands.

ARTICLE II - DEFINITIONS

The following terms as used in this Ordinance shall have the following meanings:

1. "ASSIGNMENT" shall mean the legal right to use and occupy Tribal Trust Lands on the Rincon Reservation subject to the conditions and limitations set forth in this Ordinance and shall include existing Assignments and new Assignment Leases as defined under this Ordinance.
2. "ASSIGNMENT LEASE" shall mean the legal instrument by which Band Members will be issued new Assignments under this Ordinance. An "Assignment Lease" issued under this Ordinance and approved by the Bureau of Indian Affairs shall be synonymous with the term "Assignment" as used in this Ordinance and as provided for under the Rincon Articles of Association, Section 6. b.
3. "ASSIGNEE" means the holder of an existing Assignment or a new Assignment Lease issued pursuant to the provisions of this Ordinance.
4. "APPLICANT" means a person who has submitted an application to the Rincon Housing Department Land Use Office requesting an Assignment Lease or Lease.
5. "BAND" shall mean the Rincon Band of Luiseño Indians.
6. "BIA" means the Bureau of Indian Affairs.

7. "BUSINESS COMMITTEE" shall be the five member committee elected by the General Membership pursuant to the Rincon Articles of Association Section 3.
8. "DAY" as used in this Ordinance means business day and does not include weekends or holidays.
9. "FAIR MARKET VALUE" shall be determined by the Band by taking the average of no less than two (2) appraisals. The appraisal methodology shall be mutually agreed upon between the parties. Appraisals will be based on the structures and fixtures on the Assignment only and not on the Tribal Trust Land. All appraisal costs shall be split between the parties.
10. "ENROLLED MEMBER" means a person whose name appears on the current membership roll of the Band.
11. "EXISTING ASSIGNMENTS" means all Assignments issued prior to approval of this Ordinance.
12. "FIXTURES" means personal property that has become physically attached to the land in such a manner that its removal would damage the personal property. (i.e., anything of non-removable nature.) For purposes of this Ordinance, a house is not a "Fixture".
13. "GENERAL MEMBERSHIP" means all voting members of the Rincon Band of Luiseño Indians. As used in this Ordinance, except for approving and amendments to the Ordinance, "General Membership" shall mean only those voting members who are in attendance at the General Membership meeting where a duly noticed Assignment action is to be taken.
14. "IMMEDIATE FAMILY" means a Rincon Band Member's parent(s), siblings, children, and grandchildren.
15. "RINCON HOUSING DEPARTMENT LAND USE OFFICE" means the office established by the Band that is responsible for overseeing the Assignment application process, preparing Assignment recommendations for the General Membership, maintaining Assignment records and files and other duties set forth under Article IV.
16. "LEASE" means a written agreement whereby the Band (the landowner) relinquishes its right to immediate possession of Tribal Trust property while retaining ultimate legal ownership. A Lease, unlike an Assignment Lease, may be issued to a non-member surviving spouse or Rincon Lineal and is not synonymous with the word "Assignment" as referenced in the Articles of Association, Section 6 b.
17. "LESSEE" means a person who holds an estate in property by virtue of a lease.
18. "NEW ASSIGNMENT" means an Assignment issued after the approval of this Ordinance.

19. "OCCUPY" means to live on the Assignment for a total of a six-month period (not consecutive) each calendar year.
20. "RINCON LINEAL" means an immediate blood family member of a Rincon Band Member, who is not an enrolled member of the Band.
21. "SHALL" means that a certain action or event must occur.
22. "SUCCESSOR" means the eligible person who is designated by the Assignee to take his or her Assignment at his or her death.
23. "SURVIVING SPOUSE" means a husband or wife of a deceased Rincon Band Member.

ARTICLE III - ELIGIBILITY FOR AN ASSIGNMENT LEASE

Section 1. Age Limit

Enrolled Band Members who are 21 years of age may apply for and be issued an Assignment Lease. Band Members between the ages of 18 and 20 years may apply for an Assignment Lease upon a showing that he or she has secured a home that will and can be placed on the Assignment within the required time frame under this Ordinance for occupying the Assignment and it is demonstrated that he or she can meet all other requirements for obtaining an Assignment Lease.

Section 2. Disqualifying Criteria for an Assignment Lease

The following will disqualify a Band Member from being issued an Assignment Lease:

- a. Holding an Assignment on the Rincon Reservation;
- b. The Band Member had an Assignment or Assignment Lease previously canceled for cause within five years from the date of application;
- c. The Band Member is the sole owner of an allotment or fee simple land on Rincon Reservation, unless the owner can demonstrate he or she cannot build upon or occupy the land, in which case the Band may, with the owner's consent purchase the land. This subsection does not apply to any existing Assignment holders;
- d. Sharing an undivided interest in an allotment on the Rincon Reservation with other interest owners, unless the Band Member can demonstrate that he or she is unable to obtain the necessary consent from the other joint owners to build a residence on the allotment or that he or she cannot build upon or occupy the land;
- e. He or she is not in good standing with the Band (i.e., owes a delinquent debt to the Band), has been excluded from the Reservation, has been convicted for violating Tribal Law, and/or has been convicted, within the last seven (7) years of a sex offense, a drug related or violent crime.

ARTICLE IV - DUTIES OF LAND USE OFFICE

Section 1. Establishment of Rincon Housing Department Land Use Office

The Business Committee shall establish the Rincon Housing Department to be the Land Use Office within the Tribal Administrative Organization no less than three months from approval of this Ordinance. The Business Committee shall act in the capacity of the Rincon Housing Department Land Use Office until such time as the Office is established, fully staffed and operational.

Section 2. Responsibilities and Duties of the Rincon Housing Department Land Use Office

The Rincon Housing Department Land Use Office shall be responsible for implementation of this Ordinance and applicable policies and procedures. The Rincon Housing Department Land Use Office duties shall include and not be limited to:

- a. In conjunction with the Business Committee, identify and determine Tribal Lands suitable for Assignments. "Suitable" for Assignments means having such lands surveyed if necessary, ensuring that utilities are accessible to the property boundary, working with the Rincon Environmental Department to have all Lands environmentally reviewed, obtaining Title Status Reports (TSRs) from the BIA and performing other such duties necessary in identifying and making Tribal lands available for Assignments. Applicant will reimburse tribe for cost of survey once assignment lease has been approved. A list of all Tribal Lands identified as suitable for Assignments will be available at the Rincon Housing Department Land Use Office;
- b. Ensuring compliance with the Ordinance and issuing notices of violation when necessary;
- c. Ensuring that Assignments that are not immediately reassigned (where there is no successor) are maintained;
- d. Determine when an extension of the one year occupancy requirement may be granted under Article IX Section 11;
- e. Posting all required public notices as set forth in this Ordinance;
- f. Act as the repository of all existing and new Assignment records and files. The Rincon Housing Department Land Use Office will make sure that all Assignment records and files are updated and accurate;
- g. Sending successor forms to all Assignment holders to ensure said forms are current and accurate;
- h. Investigating and making recommendations regarding whether an existing use on an existing Assignment may continue and/or whether a successor may continue a use following the death of the original Assignee;
- i. Assisting with the sub-dividing of existing Assignments and preparing a recommendation to the General Membership;

- j. Developing the necessary Assignment applications and forms to make recommendations to the General Membership for final approval or disapproval. The Rincon Housing Department Land Use Office will process all Assignment applications;
- k. Investigating and making recommendation concerning whether a Band Member has a valid existing Assignment;
- l. Developing and processing Lease applications for Rincon Lineal immediate family members and others qualified to hold a Lease under this Ordinance;
- m. Submitting all Assignment Leases and Leases approved by the General Membership to the BIA for final approval;
- n. Preparing recommendations to the General Membership on behalf of an Assignee who is requesting to relinquish, assign, exchange or transfer an Assignment;
- o. Upon the death of an Assignee, conducting a diligent search to identify family members or heirs of the deceased Assignee.
- p. Ensuring that an applicant has not been named a “designated successor” to an Assignment.

ARTICLE V - PROCESSING ASSIGNMENT LEASE AND LEASE APPLICATIONS

Section 1. Listing of Assignments

The Rincon Housing Department Land Use Office will post and maintain a list of all available Assignments. A deceased Tribal member’s Assignments will not be listed as an available Assignment if he or she has a named successor. If the successor declines or forfeits the Assignment, it may at that time be listed as an available Assignment. If there is no named successor, the Assignment may be listed as available; priority will be given to an immediate family member if he or she files an application within one year from the date the Assignee passed.

Before an Assignment is added to the list for posting, the Rincon Housing Department Land Use Office will notify, in writing, all Tribal members who are 55 or older of the availability of the Assignment and that he or she has 60 days to file an application for the Assignment. Applications timely received will be processed as provided for under Section 2 below.

Section 2. Filing and Processing of Applications for Assignment Lease or Lease

All applications for an Assignment Lease or Lease must be filed on a written application form available from the Rincon Housing Department Land Use Office. There is no time limitation on when a person may apply for an Assignment Lease or Lease. Applications for an Assignment Lease or a Lease shall be filed in triplicate with the Rincon Housing Department Land Use Office. The Application shall include a specific description of the land requested, including the tract and section number. That description shall be obtained from the Rincon Housing Department Land Use Office. Incomplete applications will be returned to the applicant and he or

she will have 20 days to resubmit a completed application. If the application is not received within the 20 days it will be removed from the Assignment list.

All applications for an Assignment Lease or Lease will be date stamped to ensure that the application is timely processed. Except for applications filed by a successor to an Assignment or a Band member who is 55 years or older under Section 1. above, all applications will be placed on a list in the priority in which they are received. If more than one application is received for the same Assignment, the Rincon Housing Department Land Use Office will consider the date upon which the application was filed and also give priority to applicants who are:

1. Seeking an Assignment Lease of Trust Land that was previously held by a member of his or her extended family;
2. Guardians of minor children; or
3. Conservators of adult Band Members, and Band Members

In the event of an Assignment holder's death, the designated successor will be given priority to the Assignment. A surviving spouse (member and non-member) or immediate family member (Band Member and Rincon Lineal) who is not designated as a successor but who submits an application within from the death of the Assignee, will be given priority for the deceased Assignee's Assignment.

Section 3. Posting of Applications for Assignment Lease or Lease

The Rincon Housing Department Land Use Office shall review all applications for completeness within 30 days from when they are filed and post the applicant's name and the tract and section number of the Assignment at the Rincon Housing Department Land Use Office and on the Rincon Band's website for a period of not less than fifteen (15) days.

Section 4. Opposing an Application for an Assignment Lease or Lease

Any member of the General Membership may oppose or support the granting of an Assignment Lease or Lease by filing a written document within the 15-day posting period with the Rincon Housing Department Land Use Office.

Section 5. Recommendation on the Application for an Assignment Lease or Lease

After the 15-day posting period, the Rincon Housing Department Land Use Office shall make a recommendation for final approval or disapproval of the application. The application, written recommendation and any opposition documentation shall be forwarded to the Business Committee requesting that the matter be placed on the agenda of the next regularly scheduled General Membership meeting.

If the next regularly scheduled General Membership meeting will not permit adequate time to notice the applicant as set forth below or the agenda cannot accommodate the Assignment matter being added, the matter will be held over to the following regular General Membership meeting.

Section 6. Notice to the Applicant

The applicant will be notified in writing by the Rincon Housing Department Land Use Office 20 days before the General Membership meeting and also will be provided a copy of the Rincon Housing Department Land Use Office's recommendation, as well as any objection that has been filed opposing the application. The applicant must be present at the General Membership meeting when the application is presented.

ARTICLE VI - ACTION ON THE ASSIGNMENT LEASE OR LEASE APPLICATION

Section 1. Presenting the Application to the General Membership

The Rincon Housing Department Land Use Office will present the application, recommendation and any objection to the application to the General Membership. A representative from the Rincon Housing Department Land Use Office shall answer any questions the General Membership may have concerning the Rincon Housing Department Land Use Office's recommendation. The applicant will then be allowed to address the General Membership and present any information in support of the granting of his or her application. Detailed minutes will be kept at the General Membership meeting when Assignment applications are presented and shall include a record of any objections to the application and/or support of the application.

Section 2. General Membership Vote on the Assignment Lease or Lease

The Business Committee Chairperson or in the absence of the Chairperson, the next highest designated Business Committee Member, shall call for the vote of the General Membership as defined under Article II, 13., and a majority of those voting by secret ballot will determine whether the application is approved or disapproved. The vote of the General Membership will be announced at the meeting. The applicant will be notified by certified mail of the decision of the General Membership within 10 days from the General Membership meeting. The written decision of the General Membership shall set forth the basis of the decision. If the application was denied, the applicant will be informed of his or her right to appeal the decision pursuant to Article XII of this Ordinance.

Section 3. Preparation of the Assignment Lease or Lease

When an Assignment Lease or Lease application is approved, the General Membership shall authorize the Business Committee to execute an Assignment Lease or Lease with the person on behalf of the General Membership. The Rincon Housing Department Land Use Office will prepare the necessary Assignment Lease or Lease form and accompanying documents. It is the intent and desire of the Band that all Assignment Leases and Leases will be issued for the life time of the Assignee and Lessee and to accomplish this all Assignment Leases and Leases shall be for a term of 25 years with an automatic renewal for an additional 25 years. A new Assignment Lease or Lease will be executed at the expiration of the 50 year lease period if so requested by the Assignee or Lessee. The lease payment shall be no more than one dollar (\$1.00) a year. All Assignment Leases or Leases will provide for necessary road and utility rights-of-way. All documents will be forwarded to the BIA, Southern California Agency, for final approval. Copies of the Assignment Lease or Lease and accompanying documents will be provided to the applicant.

Section 4. BIA Approval of the Assignment Lease or Lease

Once the BIA has approved the Assignment Lease or Lease, the applicant will be notified in writing with a copy of the lease. The lease and all accompanying documents will be maintained at the Rincon Housing Department Land Use Office and recorded at the BIA.

ARTICLE VII - SUB-DIVISION OF EXISTING ASSIGNMENTS

Section 1. Purpose of Sub-Division of Existing Assignment

An existing Assignment holder may request that his or her Assignment be sub-divided into individual lots of no less than one-half (½) acre for the purpose of providing his or her immediate family member(s), including Rincon Lineal immediate family members, a residence.

Section 2. Filing and Processing of Sub-Division Requests

All sub-division requests will be filed with the Rincon Housing Department Land Use Office and will include a certified sub-division map and survey prepared by a licensed surveyor if applicable. The Rincon Housing Department Land Use Office will determine whether the sub-division proposal is viable (environmental clearance, infrastructure, access, etc.) and make a recommendation to the Business Committee. The Business Committee shall process the sub-division request in the same manner as a request for any Assignment Lease or Lease under Article VI, including the right of appeal.

Section 3. Approval of the Sub-Division Requests

If approved by the General Membership, the immediate family member will be issued an Assignment Lease and in the case of a Rincon Lineal immediate family member a Lease will be issued on a form approved by the BIA. The term of the Assignment Lease or Lease will be for a period of 25 years plus an additional option of 25 years. The lease payment shall be one dollar (\$1.00) annually. The immediate family member, both Band Member and Rincon Lineal, shall be required to comply with Article IX, Section 11 as to occupancy on the sub-divided lot and may not use the property for commercial, rental, or non-residential purposes.

ARTICLE VIII - MUTUAL HELP HOMES NOT LOCATED ON AN ASSIGNMENT

Section 1. Report on Mutual Help Homes Not on an Assignment

Within six (6) months to one year from the approval of this Ordinance, the Rincon Housing Department Land Use Office shall investigate and prepare a report, in conjunction with the Tribal Housing Department, of all Mutual Help homes that are paid off and located on the Rincon Reservation but not on an existing Assignment.

Section 2. Survey

The Rincon Housing Department Land Use Office will have the land surveyed and have a land description prepared identifying the location of the home and the acreage occupied. Once the

assignment is approved, the applicant will reimburse the Rincon Housing Department Land Use Office for the survey.

Section 3. Issuance of Assignment Leases

It is the intent of this Ordinance that each Mutual Help Band Member homeowner be issued an Assignment Lease for his or her Mutual Help home without further approval from the General Membership. Assignment Leases shall be issued by the Rincon Housing Department Land Use Office once the one-half (½) to one (1) acre area is identified. The Assignment Lease will be issued in the name of the Band member Mutual Help homeowner, who may be the original Band Member homeowner or in the case of his or her death, to a Band Member successor, a member spouse or immediate family member who is a Band Member.

Section 4. Notification and Required Occupation

Each Mutual Help homeowner will be so notified of his or her designated Assignment Lease and informed that he or she, if not occupying the home, will have 6 months to occupy the home as provided for under Article IX, Section 11. Failure to occupy his or her Assignment may result in the cancellation of the Assignment as provided for under Article XI. Should the homeowner choose not to reside in the home, he or she may move the home or the Band may pay fair market value for the home.

Section 5. Issuance of Lease to Non-Member Spouse and Rincon Lineal Immediate Family Member

If the present homeowner is a non-member surviving spouse or a Rincon Lineal immediate family member of the original Mutual Help homeowner he or she may be issued a Lease. All such persons shall make application for the Lease as set forth under Article V., and the application will be processed in accordance with Article VI. If the Lease is approved, the homeowner will be required to comply with Article IX, Section 11. Failure to occupy his or her Mutual Help home may result in the cancellation of his or her Lease as provided for under Article XI. Should the homeowner choose not to reside in the home, he or she may move the home or the Band may pay fair market value for the home.

Section 6. Mutual Help Homes Currently Under Tribal Lease

All Mutual Help Home participants who are currently under a residential lease with the Tribal Housing Department may apply for an Assignment Lease for the land area identified in his or her residential lease and/or surrounding area not to exceed one (1) acre. The participant may apply for an Assignment Lease under Article V., and the application will be processed under Article VI. If approved, the Rincon Housing Department Land Use Office will work with the BIA to convert the participant's residential lease to an Assignment Lease.

ARTICLE IX - GENERAL LAND AND PROPERTY POLICY

Section 1. Lot Size and Infrastructure

All new Assignment Leases and Leases shall be no less than one-half (½) and no greater than one (1) acre, except Band Member successors to an existing Assignment may take the entire existing Assignment even if it exceeds (1) acre. The Band will be responsible for certain infrastructure (waterline) to the property line of the Assignment. Provision and maintenance of infrastructure (septic, water, electricity, etc.) from the property line to interior of the Assignment or Leased Lands will be the responsibility of the Assignee or Lessee.

Section 2. Improvements

Removable improvements to the property, not considered fixtures of the land, shall be considered personal property of the Assignee or Lessee, and may be removed upon the termination or cancellation of an Assignment or Lease.

Section 3. Houses

All houses, regardless of removability, constructed on an Assignment or Leased Land shall be considered the personal property of the Assignee or Lessee and may be inherited or determined to be the personal property of an heir. This includes mobile/manufactured houses that are permanently attached to the land. Any successor to a home on an Assignment or Leased Land that does not want the home may request that the Band purchase the home for fair market value. Where there is no designated successor, surviving spouse or immediate or extended family who has requested the Assignment and home within one year from the death of the Assignee or Lessee, the home will revert to the Tribe and become Tribal property.

Section 4. Fixtures

All fixtures to an Assignment or Leased Land, even though attached by the Assignee or Lessee, are considered to be real property with title vested with the land and must remain on the Assignment or Leased Land, unless removal is authorized by the Business Committee for health and safety reasons. Fixtures include, but are not limited to, the following:

1. Underground water facilities;
2. Trees and shrubs;
3. Wells installed, well curbing, and irrigation facilities.

Section 5. Disposal of Personal Property

If an Assignee or Lessee abandons or vacates his or her Assignment for whatever reason, his or her Assignment, any and all personal property or effects must be removed or otherwise disposed of within 60 days after formal written notice has been prepared and served upon the Assignee or Lessee by the Rincon Housing Department Land Use Office. In the event the personal property or effects are not removed within the specified period, at the direction of the Business Committee, the personal property and effects will be removed and stored at the Assignee's or Lessee's expense for 30 days. After such time, if not claimed by the Assignee or Lessee, the

personal property becomes Tribal property and may be used or disposed of by the Business Committee in any lawful manner.

In the case of an Assignee's or Lessee's death and no heir or family member can be located after a diligent search by the Rincon Housing Department Land Use Office, the personal property and effects of the decedent will become the property of the Band and disposed of in a lawful manner.

Section 6. Valid Existing Assignment

This Ordinance shall apply to all existing and new Assignments. All questions concerning whether or not a Band Member has an existing and valid Assignment shall be investigated by the Rincon Housing Department Land Use Office and presented to the General Membership for final determination. Should the General Membership determine that a Band Member does not have a valid existing Assignment; the Band Member will be notified in writing and informed of his or her right to appeal the General Membership's decision under Article XII.

Section 7. Income from Unassigned Tribal Lands

All income from unassigned Tribal land and property, including formal Assignments that have been abandoned or revoked, shall be deemed Tribal income and shall be deposited to the general account of the Band.

Section 8. Voluntary Relinquishment of an Assignment or Leased Lands Will Revert Back to the Rincon Band

An Assignee or Lessee may relinquish all or part of his or her Assignment or Leased Lands at any time by giving written notice, including the legal description, to the Rincon Housing Department Land Use Office. No relinquishment may be for less than one-half (½) acre.

Section 9. Transfer, Assigning and Exchange of Assignment or Leased Lands

An Assignee or Lessee may not transfer, reassign or exchange his or her Assignment or Leased Land without the consent of the General Membership. All requests for transfer, exchange or reassigning an Assignment or Leased Lands will be processed through the Rincon Housing Department Land Use Office in accordance with Article VI.

Section 10. Granting of Right-of-Ways and Leases

The granting of easements, leases, rights-of-way, and other instruments affecting Title to Tribal Lands is subject to this Ordinance, Federal Laws and Regulations. The Assignee or Lessee is prohibited from entering into any such agreement without the consent of the General Membership and required approval by the BIA. All minerals, including sand, gravel, oil and gases are hereby reserved to the Band with the right to explore, lease or dispose of the same in accordance with Tribal and/or Federal Laws and Regulations. The Band further reserves the right of ingress and egress over any Assignment or Leased Lands.

Section 11. Required Occupancy

Any person who is issued an Assignment Lease or Lease under this Ordinance shall occupy the property as his or her residence within one (1) year of being granted the Assignment. Failure of an Assignee or Lessee to use the property as his or her residence within the one (1) year of the granting of the Assignment Lease or Lease may be grounds for cancelling the lease. The one year time limit may be extended upon a showing of “good cause”, but for no more than one (1) additional year (See Section 13 for “good cause” definition.) All extensions shall be filed and approved by the Rincon Housing Department Land Use Office.

Section 12. Use and Occupancy of Existing Assignments

An Assignee has one year from the date the Rincon Housing Department Land Use Office notifies the Assignee that he or she must occupy his or her existing Assignment as his or her residence under the same terms and conditions under Section 11 above.

If an existing Assignee is not occupying his or her Assignment, and the Assignment is in non-residential use (i.e. commercial, agricultural, public service, etc.) at the time this Ordinance is approved, the General Membership may approve the continuation of the use if all Tribal Laws, Ordinances and Regulations are being complied with and the use is found to be compatible with the surrounding community. An Assignee may appeal a denial by the General Membership of his or her continued use of his or her Assignment under Article XII.

Upon the death of an Assignee with an existing Assignment, the successor will have the option of occupying the Assignment as a residence or may apply to the Rincon Housing Department Land Use Office to continue the existing use on the Assignment.

The Rincon Housing Department Land Use Office will review the application to determine if the use is suitable and compatible for the area where the Assignment is located, whether the use is in compliance with Tribal Environmental and Health and Safety Laws, whether the use is supported by sufficient infrastructure, and other criteria established by the Rincon Housing Department Land Use Office.

The Rincon Housing Department Land Use Office shall submit its recommendation on the continuation of the use of the Assignment to the Business Committee for presentation to the General Membership, who will determine whether the use will be permitted to continue. All uses approved by secret ballot vote of the General Membership shall be subject to any terms or conditions the General Membership determines are appropriate and necessary. The vote of the General Membership will be announced at the meeting. A successor may be required to occupy the Assignment as his or her residence in order to continue the use on the Assignment. If the General Membership determines a non-residential use is not to be continued, the Band may pay the successor fair market value for the business or commercial operation. A non-residential use may be determined to have no fair market value if found to be in violation of Tribal or Federal Environmental Laws and/or other applicable Tribal Codes or Ordinances.

Section 13. Limited Absence from an Assignment or Leased Lands

An Assignee or Lessee may be absent from his or her property for more than one (1) year for “good cause”. “Good cause” includes and is not limited to medical reasons, military reservists

called to active duty, active military duty, employment, education, failure of commenced sale of off reservation realty or other reasons approved by the Rincon Housing Department Land Use Office.

Section 14. No Third Party Liability

The Band is not liable or responsible and shall not become involved in any third party dispute between the Assignee or Lessee and a third party over the occupancy of the Assignment or Leased Land. Said third parties shall have no recourse against the Band.

ARTICLE X - PREFERENCE TO SURVIVORS

Section 1. Designated Successor

The right to an Assignment is not subject to inheritance but an Assignee has the right to designate a “successor” to his or her Assignment upon death, who may be a Band Member, his or her spouse (Member or Non-Member) or a member of his or her immediate family (Member or Rincon Lineal). A successor designation form shall be made available by the Rincon Housing Department Land Use Office. The General Membership shall make the person designated the first priority for the Assignment after the death of the Assignee if the successor is qualified under this Ordinance to hold the land under an Assignment Lease or Lease. Upon approval of this Ordinance, the Rincon Housing Department Land Use Office shall notify all existing Assignment holders to ensure they have an updated and filed successor designation form. Existing Assignment holders may also be requested by the Rincon Housing Department Land Use Office to submit their Assignment documents to the Rincon Housing Department Land Use Office so that the Rincon Housing Department Land Use Office has a current and complete file on all Assignments.

A non-Band member spouse or Rincon Lineal who succeeds to an Assignment under a Lease may not designate a successor to his or her Leased Land. At the Lessee’s death, the Land subject to the lease will revert to the Band to be re-assigned or designated for other Tribal use.

Section 2. Application by Successor

The General Membership may issue an Assignment Lease or Lease to a successor if that person is eligible to receive the Assignment in accordance with Article III or is a Rincon Lineal immediate family member and meets the requirements of Article III Section 2, c and e. A named successor shall apply for the Assignment as provided under Article V and action on the application shall follow the provisions of Article VI, including the right to appeal the denial of the Assignment Lease or Lease to the successor.

Section 3. Election of Only One Assignment

If the successor already has an Assignment on the Rincon Reservation or any other reservation, the successor must elect one Assignment. No person may have more than one Assignment on the Rincon Reservation.

Section 4. No Designated Successor

For existing Assignments with no designated successor, the General Membership shall give preference in the re-assignment of the premises to the surviving spouse or children, provided any of them is otherwise eligible to receive an Assignment under provisions of this Ordinance, and applies for the premises within one (1) year from the death of the Assignee. If no application is made within one (1) year, the Assignment and all personal property and effects (including a home) will revert to the Band and no "fair market value" will be paid.

Section 5. No Successor or Immediate Family

Where there is no designated successor or surviving immediate family (including Rincon Lineal), the Assignment will revert back to the Band and be subject to re-assignment or designated for other Tribal use.

Section 6. Surviving Spouse

It is the custom and tradition of the Band that a surviving spouse who is not eligible to receive an Assignment, whether or not he or she has a minor child or minor children, will be allowed to reside in the family home on the Assignment for his or her life so long as he or she does not remarry a non-Rincon Band Member. Should the surviving spouse choose not to reside in the family home, the surviving spouse may either remove the home or the Band shall pay the spouse fair market value for the home.

A surviving spouse under this Section will be issued a Lease, not an Assignment Lease. If the Assignment is greater than one-half (½) acre, the Lease will be for that portion of the Assignment where the home is located and, if there are no children, the remainder will revert to the Band for re-Assignment. If there is a child or children, the remainder of the Assignment may be subdivided, not to exceed the original size of the Assignment. A subdivided parcel will be held in trust for each minor child until he or she reaches the age of 21 at which time he or she may file an application for an Assignment Lease or a Lease in the case of a non-member child. All excess acreage not being held in trust for a minor child under this Section will revert to the Band for re-Assignment.

Section 7. Orphan and Abandoned Children

For the benefit of orphaned or abandoned minor children residing on his or her parent's Assignment, the General Membership in its discretion may grant a Lease to any adult qualified as the child's or children's legal representative under Tribal Law or with any adult found suitable by the General Membership to act as the child's or children's legal representative. The Lease will be for that portion of the Assignment where the home is located. The Lease term shall be for a period sufficient to allow the orphan or abandoned child to reach the age of 21 years or last child of the family to reach 21 years if there are multiple children. Upon reaching the age of 21, he or she (both Band Member and Rincon Lineal) may apply for the Assignment or Lease.

Section 8. Incompetent Adult Members

The General Membership may issue a Lease to the conservator of an adult Band Member who has been found to be incompetent by the Band or a state court, should the Band Member be in

need of a residency. The conservator may apply for an Assignment Lease under Section V on behalf of an incompetent adult Band Member.

ARTICLE XI - CANCELLATION OF AN ASSIGNMENT OR LEASE

Section 1. Cancellation of an Assignment Lease or Lease

An Assignment (existing and new) or Lease may be canceled if an Assignee, Lessee, or guest, invitee, or members of the Assignee's or Lessee's household violates the provisions set forth below and/or any other violation of this Land Assignment Ordinance. Any person violating this Ordinance may also be excluded from the Reservation pursuant to the Band's Exclusion Ordinance.

Section 2. Grounds for Cancellation of an Assignment Lease or Lease

Grounds for cancellation of an Assignment (existing and new) or Lease may include and are not limited to:

1. Failing to occupy his or her Assignment or leased property as proscribed under Article IX, Sections 11 and 12;
2. Creating a public nuisance that endangers life and/or property;
3. Attempting to transfer, reassign, sublease or exchange an Assignment or Lease without proper approval of the General Membership;
4. Illegally granting an easement, right of way, lease hold interest or any interest in an Assignment or Leased Lands without proper approval;
5. Removing fixtures from the Assignment or Leased Land that are part of the real property;
6. Engaging in or allowing another person to engage in illegal activities or conduct on the Assignment or Leased Land;
7. Failing to perform proper and necessary weed abatement on a bi-annual basis;
8. Failing to comply with a lawful order of the Rincon Band or Tribal Court;
9. Failing to comply with any and all applicable BIA Leasing Laws and Regulations;
10. Non-payment of lease payment;
11. Violating the terms and conditions of the Assignee's Mutual Help Occupancy Agreement or Guaranteed Home Loan (i.e. Section 184);
12. Exercise of the Band's power of eminent domain. Such taking will be in conformity with the provisions of the Indian Civil Rights Act (i.e. due process and just and fair compensation.)

Section 3. Compliance Review

The Rincon Housing Department Land Use Office shall review the use of all Assigned and Leased Tribal Lands on a continuing basis and shall prepare a written report of any violations of this Ordinance.

Section 4. Notice of Violation

The Rincon Housing Department Land Use Office shall give written notice to the alleged violator giving him or her opportunity to correct the reported violation within a specified period of time of not less than 10 days.

Section 5. Action on Violations

If the Rincon Housing Department Land Use Office deems a violation is sufficiently serious or if the alleged violator fails to take corrective action upon being given the opportunity to correct the violation, the violation shall be referred to the General Membership who will determine, by secret ballot, whether or not the Assignment Lease or Lease should be canceled. The Assignee or Lessee will be notified within 15 days before the General Membership meeting and informed that he or she may appear before the General Membership to be heard on whether the Assignment or Lease should be canceled. The Rincon Housing Department Land Use Office shall present the violation to the General Membership and the Assignee or Lessee will be given an opportunity to address the General Membership. At the conclusion of the presentation a vote by secret ballot will be called and a majority of the General Membership will decide whether to cancel the Assignment or Lease. The General Membership's vote will be announced at the meeting. The General Membership's decision shall be in writing and served by certified mail on the Assignee or Lessee. The written notification shall advise the Assignee or Lessee that if he or she disagrees with the decision of the General Membership, he or she may file a Notice of Appeal with the Rincon Tribal Court.

ARTICLE XII - APPEALS

Section 1. Who May Appeal

The following persons (herein "Petitioners") may file an appeal to the Rincon Tribal Court:

- a. An applicant whose Assignment Lease or Lease application has been denied;
- b. A Band Member who has been found not to have a valid existing Assignment;
- c. A designated successor who has been denied an Assignment Lease or Lease;
- d. An Assignee whose request to sub-divide his or her existing Assignment has been denied;
- e. An existing Assignment holder who has been denied the right to continue his or her non-residential use of his or her Assignment;
- f. A successor who has been denied continued use of an existing Assignment.
- g. An Assignee or Lessee whose Assignment (existing or new) or Lease has been canceled.

Section 2. Notice of Appeal

A Petitioner shall file a "Notice of Appeal" with the Rincon Tribal Court within 20 days from receipt of the General Membership's written decision. Within five (5) days from receipt of a "Notice of Appeal", the Tribal Court shall make a written request to the Rincon Housing Department Land Use Office for a copy of all documents relating to Petitioner's case including all documents submitted to and relied upon by the General Membership in making its final decision, including a transcript of the General Membership meeting if available. The Rincon Housing Department Land Use Office shall submit all requested documents to the Tribal Court within ten (10) days from receipt of the Court's request.

Section 3. Petitioner's Response

Upon receipt of the written record from the Rincon Housing Department Land Use Office, the Tribal Court shall send the Petitioner a written notice that he or she has 10 days from receipt of the notice to submit his or her written argument and supporting documents on why he or she believes the General Membership decision is in error. A copy of the Petitioner's written argument and documents will be served on the Rincon Housing Department Land Use Office and will be given 10 days to file a written response.

Section 4. Decision on the Record

Appeals filed by Petitioners identified under a. through f. of Section 1 above will be decided without a hearing. The Tribal Court, after review of all the written arguments and documents, shall make a determination whether Petitioner was provided due process and whether the General Membership's decision was reasonable and supported by a preponderance of the evidence. The Tribal Court decision will be in writing and served on the Petitioner and the Rincon Housing Department Land Use Office. The Tribal Court decision will be final.

Section 5. Appeal Hearing

Appeals from the cancellation of an Assignment or Lease will be scheduled for a hearing before the Tribal Court 30 days after the Court has received all of the documents and pleadings under Section 3, above. The Tribal Court shall serve the Petitioner and the Band with notice of the hearing no less than 20 days before the hearing date. Either party may request, no less than 10 days before the hearing, a continuance for good cause.

Section 6. Hearing Process

At the hearing, a Tribal Representative shall present its case to the Tribal Court and may call witnesses and produce documents in support of its decision to cancel the Petitioner's Assignment. The Petitioner shall be permitted to question the Band's witnesses.

After the Tribal Representative has completed his or her presentation, Petitioner shall present his or her oral and/or written evidence. All evidence must be relevant to the decision to cancel Petitioner's Assignment. The Band shall be permitted to question the Petitioner and his or her witnesses.

Section 7. Hearing Conduct

All hearings before the Tribal Court shall be conducted in a fair and orderly manner. Hearings before the Tribal Court shall be civil in nature, informal and may be subject to rules and procedures as may from time to time be prescribed by the Tribal Court.

Section 8. Tribal Court Decision

At the close of Petitioner's presentation, the Tribal Court may either issue a decision at that time or take the case under advisement. In all cases, the Tribal Court shall evaluate all of the evidence

and testimony and render a decision on whether Petitioner was provided due process and whether the General Membership's decision was reasonable and supported by a preponderance of the evidence. The Tribal Court shall issue its written decision setting forth its finding within five (5) days from the date of the hearing and the decision will be served on parties by personal service or certified mail with a return receipt requested. The Tribal Court decision shall be final.

Section 9. Notification to the BIA

If the canceled Assignment is an Assignment Lease or Lease, the Band shall notify the BIA that the lease has been terminated and provide a copy of the Tribal Court Order.

ARTICLE XIII - GENERAL PROVISIONS

Section 1. Severability

If any provision of this Ordinance, or the application thereof to any person or circumstances, shall be determined invalid, such determination shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision or application thereof, and, to this end, the provisions of this Ordinance are severable.

Section 2. Amendment

This Ordinance may be amended by the General Membership.

Section 3. Effective Date

The provisions of this Ordinance shall become effective upon adoption by the General Membership and shall govern all existing and future Assignments and (Residential) Leases as described under this Ordinance.

REVISED / CERTIFICATION

We, the undersigned, as the governing body of the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, do hereby certify that the foregoing Land Assignment Ordinance was adopted by the Rincon Band of Luiseno Indians on June 2, 2010 and amended on November 30, 2010 and certify that the Rincon Business Committee is composed of five (5) members of whom 4 constituting a quorum were present at a meeting duly held on November 30, 2010, by a vote of 4 in favor, 0 against, 1 absent, and 0 abstaining.


Bo Mazzetti, Chairman


Stephanie Spencer, Vice Chairwoman


Charlie Kolb, Council Member


Steve Stallings, Council Member


Kenneth Kolb, Council Member
