

RINCON BAND OF LUISEÑO INDIANS



DRAFT

Tribal Environmental Impact Report for the Proposed
Rincon PC4 Well Solar Panel and Energy Storage Microgrid Installation Project Site
1313 14 Acre Lane , Rincon Indian Reservation

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1 APPLICABILITY

1.1 Project Summary

The proposed Rincon PC4 Well Solar Panel and Energy Storage Microgrid Installation Project (Proposed Project) may result in the issuance of a Business Lease (Proposed Action) by the Rincon Band of Luiseño Indians (Rincon Band) that would allow construction and operation of this facility. The Proposed Project is expected to be added to an anticipated tax equity financing agreement that will include leasing arrangements that the Tribe must approve under the Rincon Business Leasing Regulations (Rincon Tribal Code §7.600), adopted by the Tribe in August 2013, amended in December 2014, and approved by the Bureau of Indian Affairs in June 2015. Pursuant to §7.607 of the Leasing Regulations, the proponent of a Business Lease must complete an environmental review process that includes preparation of a Tribal Environmental Impact Report (TEIR) to assess potential impacts. Under the Rincon Business Leasing Regulations, this Draft TEIR analyzes the Proposed Project's minimal to insignificant impacts in order to allow the Rincon Band to consider approval of the Business Lease.

The Rincon Reservation, an area of approximately 6,000 acres located in north-eastern San Diego County, California, was acquired by the United States in trust for the benefit of the Rincon Band in exchange for tribal lands and resources ceded to the State of California. The current membership of the Rincon Band consists of more than 500 members, and the current population of the Rincon Band Reservation is approximately 1500 residents. The tribally owned and operated Harrah's Resort Southern California generates the vast majority of the revenue available for the Rincon Band tribal government, Reservation infrastructure, and essential governmental services to the membership.

Solaris Energy is the entity that has requested to establish this Business Lease on the Rincon Band Reservation to install a microgrid system at the Rincon PC4 Well with a 60-kilowatt (kW) carport photovoltaic (PV) system located within an existing parking area to provide shade and connect to a battery energy storage system (BESS) to provide renewable energy to offset Rincon Tribal customer load. The microgrid will use the PV system and energy storage to provide backup power to existing PC 4 Well facilities in the event of grid failure.

1.2 Authority

The Rincon Band is a sovereign Indian tribal government and has sole land use authority over the Rincon Reservation. This TEIR has been written in accordance with the Rincon Band Business Leasing Regulations (Rincon Tribal Code [RTC] §7.600; Attachment 1), adopted by the Rincon Band on August 31, 2013, amended on December 12, 2014, and approved by the Bureau of Indian Affairs in June 2015. These regulations are authorized by and subject to United States Code §415, as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Congress (2012) (HEARTH Act), its implementing regulations 25 Code of Federal Regulations (CFR) Part 162, and §6 of the Articles of Association of the Rincon Band.

Subject to RTC §7.607(a), the Tribal Council shall not approve a Business Lease until completion of the Environmental Review Process pursuant to §7.607. Under §7.607(d)(1), the Tribe shall cause the preparation of a comprehensive and adequate TEIR analyzing the potentially significant effects of the Proposed Action (Proposed Proposed) on the environment. The TEIR shall provide detailed information about significant environmental effect(s) that the lease is likely to have. The TEIR shall include the following: a description of the physical environmental conditions in the vicinity of the development project; all significant environmental effects, including those that cannot be avoided or are irreversible; and mitigation measures proposed, recommended, or required to minimize impacts to acceptable levels.

1.3 Purpose and Need

The purpose of the Proposed Action is to add an anticipated tax equity financing agreement (currently under negotiation) that will include leasing arrangements that the Tribe must approve under the Rincon Business Leasing Regulations in order to implement the Proposed Project. Solaris Energy has requested to establish a Business Lease on the Rincon Band Reservation to install a microgrid system at the Rincon PC4 Well to provide backup power in the event of grid failure. Implementation of the Proposed Project, subject to approval of the Business Lease (Proposed Action), will provide dependable electricity for uses on the Rincon Band Reservation.

1.4 TEIR Methodology

This TEIR has been written in accordance with the Rincon Band Business Leasing Regulations (Rincon Tribal Code [RTC] §7.600; Attachment 1) and includes the following: a description of the physical environmental conditions in the vicinity of the development project; all significant environmental effects, including those that cannot be avoided or are irreversible; and mitigation measures proposed, recommended, or required to minimize impacts to acceptable levels. In order to comply with TEIR requirements, a reasonable range of alternatives to the Proposed Project was evaluated in Section 2.0 to determine whether an alternative with fewer impacts could meet the purpose and need for the Proposed Action. Section 3.0 of this TEIR discusses existing site conditions and significance thresholds as they relate to individual environmental issues. Potential impacts and recommended feasible mitigation measures associated with the Proposed Project (Environmentally Preferred Alternative) and the No Project Alternative are addressed in Section 4.0 Environmental Consequences.

This Draft TEIR was prepared to determine if implementation of the Proposed Project would result in potential environmental impacts to the following relevant issue areas: aesthetics, agriculture, air quality and greenhouse gases, biology and cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, minerals, noise, traffic, public services, and utilities.

Data collected in support of the TEIR included an assessment of biological and cultural resources, a review of the location and density of residential development within a one-mile radius of the Proposed Project site, a review of Rincon Tribe environmental plans and policies, a review of San Diego County air quality and land use plans and policies, and contacts with Rincon Tribe public service providers, including the Fire Department, and utilities that serve the Rincon Band Reservation.

1.5 TEIR Conclusion

This Draft TEIR was prepared to determine if the implementation of the Proposed Project would result in potential environmental impacts to the following relevant issue areas: aesthetics, agriculture, air quality and greenhouse gases, biology and cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, minerals, noise, traffic, public services, and utilities. This Draft TEIR concludes that the Proposed Project will not result in any highly controversial or uncertain effects on the environment or pose any unique or unknown environmental risks to the immediate and surrounding environment, and that it will not establish a precedent.

1.6 Off-Reservation Impacts

This TEIR also evaluates the effects of the Proposed Project on the off-reservation environment. The closest off-reservation property is located approximately 2,200 feet southeast of the Proposed Project, with the closest off-reservation building being located over one mile away. Considering these distances from the Proposed Project, plus implementation of Best Management Practices incorporated into the Proposed Project description, any off-reservation impacts in environmental topic areas such as traffic, air quality/GHG, noise, and living resources to off-reservation resources would be avoided or reduced to less-than-significant levels and, consequently, are not discussed in detail in this TEIR.

1.7 Public Review and Comment

A Notice of Completion (NOC) for the Proposed Project was issued on January 18, 2024, initiating a 30-day comment period with a scheduled closure date of February 17, 2024. The Draft TEIR is available for public review at: <https://rincon-nsn.gov>. Hard copies of the Draft TEIR can be reviewed at the Tribal Government Center, One Government Center Lane, Valley Center, California 92082. For more information, contact the Rincon Environmental Department, Camille Merchant, Environment Director, at cmerchant@rincon-nsn.gov or (760) 749-1051.

2 ALTERNATIVES

2.1 Proposed Project (Proposed Action)

The Rincon Band proposes to grant a Business Lease to install a microgrid system at the Rincon PC4 Well at 1313 14 Acre Lane in Rincon, California, within the Rincon Indian Reservation, being a portion of USGS 7.5-minute Quadrangle Boucher Hill (1948), Section 2, Township 10 South, Range 1 West, San Bernardino Base, and Meridian, in the County of San Diego, State of California (Attachment 2, Figure 1). This includes the installation of 64 kilowatts (kW) of carport solar PV panels on adjacent tribal property, an energy storage facility, and an underground conduit to support these facilities on Rincon Band Tribal land. The PV will tie into a generation panel located just east of 14 Acre Lane, adjacent to an existing power pole. This is also where the Proposed Project BESS and PV components will interconnect with SG&E's main grid system. The carport PV system will provide shade within the existing dirt parking area on the adjacent tribal property and will be connected to a BESS to manage power by delivering backup and peak power to the existing well, pump, and associated structures in the event of grid failure.

The Proposed Project's solar PV panels would be constructed on top of one large carport canopy in the existing graded dirt parking area just south of the fenced, triangular PC 4 Well site. Some excavation and utility replacement will occur near the existing main service panels and associated utility panels and power pole just west of 14 Acre Lane and near Rincon's existing main service panel, water pump, and diesel-powered emergency generator located in the eastern portion of the fenced PC 4 Well site. Under the Proposed Action, an area of approximately 4,375 square feet (0.1 acre) would be developed/disturbed (see Attachment 2, Figure 2).

Construction activities would include the following: construction equipment access (along existing roads and previously disturbed areas adjacent to the PC4 Well); temporary excavation and stockpiling of approximately 4,300 cubic feet (159 cubic yards) of native soils during open-hole trenching for underground conduit and cable (approximately 215 linear feet of 5-foot wide by 4-foot deep) to connect the solar PV carport panel to the battery storage and generator area, and then out to the utility panel near 14 Acre Lane; shallow excavation for pads for BESS and its associated equipment; and placement/construction of the carport PV canopy involving drilling support posts in the adjacent parking area.

Project construction is expected to be completed in approximately 20 weeks. Trenching and drilling work associated with PV Carport and electrical system installation would be completed within 16 weeks, and permit acceptance is expected to take approximately 4 weeks. Minimal pre-construction staging is expected and would occur within disturbed areas or parking lots within the PC 4 Well Project Site and adjacent tribal property. Minimal ground disturbance would occur, and minimal soil fill material would be needed.

Entitlements for the Proposed Action include the TEIR Review for Lease Approval from Rincon Tribal Council.

The following Best Management Practices (BMPs) would be implemented during project construction and operation:

TABLE 1. BEST MANAGEMENT PRACTICES

BMP NUMBER	TEIR ISSUE AREA	BMP DESCRIPTION
BMP-1	Land Resources, Geology & Seismicity	Site clearing, preparation, moisture conditioning, review of imported fill, fill placement, observation of foundation excavations, and grading will be conducted in accordance with the recommendations put forth in the Geotechnical Report (Geocon, 2023) and will be verified to ensure compliance with standard engineering practices.
BMP-2	Water Resources	<p>A Water Pollution Control Plan (WPCP) will be prepared and will include the following BMPs:</p> <ul style="list-style-type: none"> • Impervious surfaces will be designed and constructed so that runoff will be directed into storm drains that will subsequently direct flow into existing stormwater infrastructure. • Materials containment, such as fiber rolls and straw wattles, will be installed around down-slope perimeters and at the base of stockpiles. • Soil stockpiles will be covered when not in active use. • Straw mulch will be applied according to the manufacturer specifications to stabilize disturbed areas. • Temporary disturbed surfaces will have erosion control measures in place. • Temporary erosion control measures, including straw wattles/fiber rolls, and silt fencing, will be provided over base soils until revegetation or landscaping is established. • Debris and mud on nearby streets caused by construction vehicles will be monitored daily and may require instituting a street cleaning program.
BMP-3	Transportation	<ul style="list-style-type: none"> • Designated travel routes for large construction vehicles will be monitored and controlled by flaggers for site ingress and egress. • To the extent possible, construction will maximize the number of available parking spaces for visitors and employees at the Rincon Government Center.
BMP-4	Noise	<ul style="list-style-type: none"> • Construction activities would be limited to daytime hours Monday through Friday. • Powered equipment will comply with applicable federal regulations and will be fitted with adequate mufflers according to manufacturing specifications to minimize construction noise.
BMP-5	Air Quality/GHG	<ul style="list-style-type: none"> • Dust emissions during transport of fill material or soil would be minimized by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads. • Dirt, gravel, and debris piles would be minimized as needed

BMP NUMBER	TEIR ISSUE AREA	BMP DESCRIPTION
		<p>to reduce dust and wind-blown debris.</p> <ul style="list-style-type: none"> CAPs, GHG, and DPM emissions would be controlled during construction by requiring that all diesel-powered vehicles and equipment be properly maintained, minimizing idling time to five minutes when loading or unloading vehicles, and turning diesel-powered equipment off when not in use, unless per the engine manufacturer's specifications or for safety reasons, more time is required.
BMP-6	Hazardous Materials	<p>Personnel will follow BMPs for fueling and servicing construction equipment and vehicles. BMPs that are designed to reduce the potential for incidents/spills involving hazardous materials include the following:</p> <ul style="list-style-type: none"> Fuel, oil, and hydraulic fluids will be transferred directly from a service truck to equipment. Catch-pans will be placed under equipment to catch potential spills during servicing. Vehicle engines will be shut down during refueling. No smoking, open flames, or welding will be allowed in refueling or service areas. Refueling will be conducted away from water bodies to prevent contamination in the event of a leak. Service trucks will be provided with fire extinguishers and spill containment equipment. Should a spill occur, contaminated soil will be disposed of pursuant to applicable regulations. Containers storing hazardous materials will be inspected at least once a week for signs of leaks. Hazardous materials such as fuels and solvents used in the construction shall be stored in covered containers a minimum of 200 feet from aquatic environments and protected from rainfall, runoff, vandalism, and accidental release to the environment. A stockpile of spill cleanup materials shall be readily available at the project site. Construction workers will be trained in spill prevention and cleanup. Equipment used during construction shall be properly inspected and maintained in designated areas with runoff and erosion control measures to minimize the accidental release of pollutants. Should contaminated soil or groundwater be encountered during earth-moving activities, work will be halted until a hazardous materials specialist or other qualified individual assesses the extent of contamination. If the contamination is hazardous, the U.S. Environmental Protection Agency (USEPA) will be consulted to determine the appropriate course of action, including a sampling and remediation plan

BMP NUMBER	TEIR ISSUE AREA	BMP DESCRIPTION
		if necessary. <ul style="list-style-type: none">Contractors shall prepare and implement a Hazardous Materials Business Plan in compliance with the California Health and Safety Code if large quantities of hazardous materials are used during construction and operation.
BMP-7	Hazardous Materials	BESS components will be monitored and maintained in a timely fashion, consistent with the manufacturer's recommended timeframes.

2.2 No Action Alternative

The No Action Alternative assumes that the Proposed Project would not be built. The purpose and need for the Proposed Project would not be fulfilled under this alternative. Existing conditions at the PC4 Well site would remain unchanged under the No Action Alternative, and no environmental consequences would occur.

2.3 Preferred Alternative

The Proposed Action is the Preferred Alternative and involves the development of the Proposed Project within portions of the fenced Rincon PC4 Well site and adjacent access roads and tribal property. This alternative includes the placement of one solar PV carport canopy connected by subsurface conduit to the Rincon PC 4 Well's existing electrical generation panels, meter, main switchboard, and generator. This is the only alternative that would fulfill the Proposed Project's purpose and needs.

3 EXISTING ENVIRONMENT (EXISTING CONDITIONS)

A discussion of existing site conditions as they relate to individual environmental issues is provided below. These conditions would remain the same under the No Action Alternative.

3.1 Land Resources

The Proposed Project site is within and adjacent to the fenced, triangular Rincon PC4 Well site located at 14 Acres Lane, east of Valley Center Road, within the southern portion of the Rincon Reservation and approximately 0.5 mile south of the existing Harrah's Resort Southern California (HRSC) casino in San Diego County, California (see Attachment 2, Figure 2).

Land uses within a one-mile radius surrounding the Proposed Project site include Valley Center Road (also known as County Road S6), approximately 0.25 miles to the west, and rural residential development to the west and east. Agricultural fields occur adjacent to the north of the Proposed Project site. Residences west of the Proposed Project site are accessed both directly from Valley Center Road and via Omish Lane, approximately 375 feet to the north of the Proposed Project Site. Residences approximately 400 feet to the east of the Proposed Project are accessed via Omish Road.

The Project Site area has been previously graded and covered in gravel and is used for parking. There is a fenced area where the BESS will be located, which contains a well pump house and a willow tree (DACL, 2023). To the south of the Proposed Project is a large, disturbed, graded, and fenced lot that is operated by the International Union of Operating Engineers for the purpose of training professionals to conduct specialized work such as operating heavy machinery. Paradise Creek, located approximately 500 feet east of the Proposed Project site, is within a narrow strip of disturbed coastal sage scrub. The San Luis Rey River is located approximately 1,100 feet north of the Proposed Project site.

Geology and Seismicity. The Proposed Project is located within the eastern mountain valley area of the Peninsular Ranges physiographic province, which extends from north to south from the Traverse Ranges and the Los Angeles Basin to Baja California, Mexico.

The Proposed Project site has relatively flat topography. The elevation of the site is approximately 885 feet above mean sea level. The Proposed Project site is located within the existing graded areas around PC4 Well. There is minimal vegetation in the area. One willow tree occurs on the northwestern portion of the Proposed Project site, outside of the Proposed Project footprint.

According to soil maps, the Proposed Project site soils consist of Visalia sandy loam with 0 to 2 percent slopes (VaC) and Tujunga sand with 0 to 5 percent slopes (NRCS, 2023). A geotechnical report found the geologic conditions consisted of undocumented fill, alluvium, and granitic rock (Geocon, 2023). It is expected that the soil underlying the majority of the Proposed Project site consists of an 8.5-foot layer of undocumented fill on top of a layer of alluvium and an underlying layer of granitic rock (Geocon, 2023). Both materials possess a "very low" to "low" expansion index, however the undocumented fill will require remedial grading to support shallow foundations (Geocon, 2023).

The Proposed Project site is not located within a designated Alquist-Priolo Earthquake Fault Studies Zone, and there are no known active fault traces (California Department of Conservation, 2023a). The nearest earthquake faults are the Julian segment of the Elsinore Fault, which is located approximately 4.8 miles north of the Proposed Project site (USGS, 2023a). Thus, the potential for the site to be subject to liquefaction and ground rupture hazards associated with an active earthquake fault is considered to be very low (Geocon, 2023). The Geologic hazards in the area are primarily limited to those caused by ground shaking from earthquake-generated ground motions on these and other regional earthquake faults.

Due to the topography of the area and the lack of slope instability, landslides are not considered to be a significant concern (Geocon, 2023). Furthermore, due to the inland location of the Proposed Project Site, the risk of being impacted by a storm surge is considered low, and the potential risk of being impacted by a tsunami or seiche is considered negligible (Geocon, 2023).

Mineral Resources. The Proposed Project site is not known to be underlain by an oil, gas, or geothermal field, and there are no oil or gas wells on or near the site (CalGEM, 2023; DOC, 2001). The site is also not located in an area where significant aggregate resources (i.e., sand and gravel) are present, and there are no mineral extraction activities occurring on or near the site (DOC, 2020).

Paleontological Resources. As stated above, the Proposed Project site is located on previously disturbed and graded areas near the Rincon PC4 Well. Further, no prehistoric resources were found during the cultural assessment conducted for the site by Destiny Archaeology Consulting Ltd. (DACL, 2023).

3.2 Water Resources

Paradise Creek is located approximately 500 feet to the east of the Proposed Project site, with the San Luis Rey River flowing approximately 1100 feet to the north (USGS, 2023b).

Surface Water Resources. The Proposed Project site is in a developed area located south of Pauma Valley, within part of the San Luis Rey River watershed (SanGIS, 2014). Paradise Creek, a tributary to the San Luis Rey River, is located approximately 500 feet to the east.

Groundwater Resources. The Proposed Project site is within the Upper San Luis Rey Valley groundwater basin, which underlies the San Luis Rey River watershed and tributaries to the river, including Paradise Creek (California Department of Water Resources, 2023; SanGIS, 2014). This groundwater basin is comprised of alluvium underlain by bedrock (GeoScience, 2022), and perched groundwater was observed at a depth of 19.5 feet (Geocon, 2023).

Flooding. The Proposed Project site is located west of Paradise Creek and is located within a FEMA Flood Hazard Zone, the Area of Undetermined Flood Hazard Zone D (FEMA, 2021). Zone D outlines an area where no flood analysis has been undertaken but a possible flood hazard may exist (FEMA, 2022).

3.3 Air Quality / Greenhouse Gas Emissions

Air quality is defined by ambient air concentrations of seven criteria air pollutants, which are common air pollutants identified by the USEPA to be of concern with respect to the health and

welfare of the general public. These pollutants include nitrogen dioxide (NO₂), ozone (O₃), respirable particulate matter less than 10 micrometers in diameter (PM₁₀), fine particulate matter less than 2.5 micrometers in diameter (PM_{2.5}), carbon monoxide (CO), sulfur dioxide (SO₂), and lead. Federal and Tribal governments regulate these criteria for air pollutants through ambient standards based on the health and/or environmental effects of each pollutant. As the responsible agency for enforcing the Federal Clean Air Act (CAA), the EPA has authority over tribal lands, including the Tribe's reservation.

The Proposed Project site is located within the San Diego Air Basin (SDAB). The San Diego County Air Pollution Control District (SDCAPCD) has jurisdiction over the SDAB. Although the SDCAPCD does not have jurisdiction on tribal lands, it is the regional agency responsible for protecting public health from air pollution in San Diego County, where the major sources of air pollutants are motor vehicle emissions, industrial processes, and solvent evaporation. The SDCAPCD has 12 monitoring stations in the air basin, with the Escondido station located nearest to the Proposed Project site (SDAPCD, 2022). However, this station is currently non-operational, pending meeting City of Escondido requirements to re-establish an air monitoring station in this area (SDAPCD, 2022). Before closing, O₃ readings at this station in 2013 and 2014 exceeded the federal 8-hour standard, and readings in 2015 were 0.070 ppm, at the NAAQS limit (PSOMAS, 2017). Until the Escondido station is reestablished, the closest station is the Rancho Carmel Drive Station, approximately 19.7 miles to the southwest, closely followed by the Palomar Airport Station, approximately 20 miles to the southwest. However, due to locational restrictions and the different purposes of the reporting stations, Kearny Villa Road Station (29.5 miles south) and Lexington Elementary School Station (32 miles south) are the closest stations that monitor ozone and respirable particulate matter. Readings at the stations (as provided in Table 2) show that 2022 ozone levels exceeded the federal 8-hour standard. With the exception of ozone level and 2020 PM_{2.5} readings, other readings were below the federal standards.

San Diego County is in partial non-attainment of the federal 8-hour ozone standard but is in attainment or unclassifiable for other federal air quality standards (EPA, 2023b).

Greenhouse gases (GHGs) are atmospheric gases and clouds within the atmosphere that influence the Earth's temperature by absorbing most of the infrared radiation that rises from the sun-warmed surface and that would otherwise escape into space. Some GHGs occur naturally and are emitted into the atmosphere through natural processes, while others are created and emitted solely through human activities. GHGs generally include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). GHGs are air pollutants covered by the Clean Air Act (CAA) and are considered to pose a threat to the public health and welfare of current and future generations. GHG emissions currently generated by the Rincon PC4 Well would be comparable to standard commercial/office buildings with parking lots.

TABLE 2. AIR QUALITY MONITORING DATA (2020-2022)

Air Pollutant	National Ambient Air Quality Standard	Annual Readings at Rancho Carmel Dr. Station			Annual Readings at Lexington Station	Annual Readings at Kearny Villa Road Station
		2020	2021	2022	2022	2022
Ozone (O ₃)						
Maximum 8-hour concentration (ppm)	0.070 ppm	*	*	*	0.076	0.071
Annual Average (ppm)	—	*	*	*	0.046	0.044
Nitrogen Dioxide (NO ₂)						
Maximum 1-hour concentration (ppm)	0.100 ppm	0.054	0.054	0.050	0.038	0.049
Annual Average (ppm)	0.053 ppm	0.013	0.013	0.005	0.006	0.006
Carbon Monoxide (CO)						
Maximum 1-hour concentration (ppm)	35 ppm	3.3	3.0	2.2	1.2	*
Maximum 8-hour concentration (ppm)	9 ppm	1.7	1.8	1.2	1.1	*
Annual Average (ppm)	—	0.5	0.5	0.29	0.3	*
Fine Particulate Matter (PM _{2.5})						
Maximum 24-hour concentration (ppm)	35 µg/m ³	40.2	23.5	14.9	26.4	13.9
Annual Average (ppm)	12.0 µg/m ³	9.2	8.5	7.69	9.0	6.8
Respirable Particulate Matter (PM ₁₀)						
Maximum 24-hour concentration (ppm)	150 µg/m ³	*	*	*	44.0	*
Annual Average (ppm)	—	*	*	*	22.0	*
ppm: parts per million; µg/m ³ : micrograms per cubic meter *data not recorded Source: EPA, 2023; SDCAPCD 2021, 2022, 2023						

3.4 Living Resources

Vegetation. The Proposed Project site is located entirely within previously disturbed, graded, and compacted areas around the current Rincon PC4 Well. Areas not covered with concrete are graded and covered in small gravel, with the exception of a willow tree on the northwestern portion of the property, which will be avoided by the Proposed Project. The vegetation community to the east of the Proposed Project footprint across 14 Are Lane is very disturbed and open, with a mix of native and non-native understory species and scattered native shrubs around intermittent Paradise Creek. There are no significant barriers between the Proposed Project site and known arroyo toad upland/aestivation habitat.

Wildlife. Reviews of the California Department of Fish and Wildlife California Natural Diversity Database and the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation and species occurrence database (IPaC) were conducted for the Proposed Project site and vicinity. Federally listed species that may occur in the vicinity include Stephens' kangaroo rat (*Dipodomys stephensi*, threatened), coastal California gnatcatcher (*Polioptila californica*, threatened), least Bell's vireo (*Vireo belli pusillus*, endangered), southwestern willow flycatcher (*Empidonax traillii extimus*, endangered), arroyo toad (endangered), monarch butterfly (*Danaus plexippus*, candidate), and Nevin's barberry (*Berberis nevinii*, endangered). No critical habitat for these species occurs within or adjacent to the Proposed Project Site (USFWS 2023). The closest critical habitat for arroyo toads is approximately 1.2 miles east of the Proposed Project site.

Based on required habitat features for these species, the arroyo toad is the only species likely to occur within the vicinity of the Proposed Project. The Arroyo Toad (*Anaxyrus californicus*) Habitat Assessment for a DC Solar PV System at PC4 Well on the Rincon Reservation (Tierra Data Inc. [TDI] 2023, Attachment 3) found that no suitable breeding habitat exists for arroyo toad within the Proposed Project site or survey area. The project footprint is almost entirely within compacted and previously disturbed areas of bare ground within an active construction site next to parking lots and other utility infrastructure. The habitat within the entire survey area is neither optimal aestivation habitat nor close enough to the breeding habitat to be used frequently. However, the TRCMP classifies Upland/Aestivation Habitat as areas within ½ a mile (805 meters) or 85 feet elevation from the nearest breeding habitat, with friable soils and less than 75 percent cover of invasive non-native species such as bromes. The project area is approximately 500 feet (150 meters) from Paradise Creek, 1100 feet (335 meters) from the San Luis Rey river, and the nearest recorded arroyo toads from recent surveys were found approximately 1125 feet (340 meters) to the north in the San Luis Rey river and approximately 1730 feet (530 meters) to the south in Paradise Creek (Attachment 2, Figure 3). Visalia sandy loam is not an optimal soil type for arroyo toad, but it is friable, while Tujunga sand in a natural, uncompacted state is an ideal arroyo toad upland habitat soil. Although the Proposed Project site consists mostly of compacted soils that are used for parking and are previously disturbed and is also within a fenced area for active earth work, the habitats around the Proposed Project site could support aestivating or foraging arroyo toads given the erosional features, proximity to two water features, and abundant of small mammal burrows in the soil.

While there is no breeding ground nearby, the creek corridor and surrounding habitat are suitable for foraging. There are no significant barriers between the project site and known arroyo toad habitat, though there are areas of highly compacted soil, for instance, the roads and parking lots. Given the conditions, while it is possible, it is extremely unlikely that arroyo toads would be aestivating within or adjacent to the project site. It is, however, reasonable that foraging arroyo toads could occasionally venture to this area, as high-quality occupied arroyo toad habitat is nearby (Rincon Band 2023).

No suitable habitat (i.e., foraging, nesting, or other) was observed for the remaining federally listed threatened and endangered species that are known to occur in the region. Critical habitat for the southwestern willow flycatcher and arroyo toad is located along the San Luis Rey River, approximately 1-mile northwest of the site. There is no suitable habitat for the southwestern willow flycatcher present within or near the Proposed Project site.

3.5 Cultural Resources

A cultural assessment was conducted for the Proposed Project site by Destiny Archaeology Consulting Ltd. (DACL, 2023), which determined that pursuant to 36 CFR Part 60, no prehistoric, sensitive cultural resources, isolates, or historic properties were encountered in the Proposed Project area. The Proposed Project site has been previously graded, and no cultural or historic properties are known to have been discovered at this location (DACL, 2023).

3.6 Socioeconomic Conditions

The Proposed Project site is located in a developed area within the Rincon Reservation. Low-density residential areas are located in the vicinity of the Proposed Project site, on the opposite side of Paradise Creek to the east and near Valley Center Road to the west. Harrah's Resort Southern California is located approximately 0.5 miles to the north. The Rincon Band Fire Department station is located approximately 0.4 miles to the southwest of the site, along Valley Center Road. The unincorporated community of Valley Center is located to the southwest.

Fire, emergency medical, and law enforcement services within the Rincon Reservation include the Rincon Band Fire Department, the Rincon Band Tribal Law Enforcement Department, and the Rincon Band Indian Health Council Clinic (Clinic). As mentioned above, the Rincon Band Fire Department station is located approximately 0.4 miles to the southwest of the Proposed Project site. Staffing at the fire station consists of three separate shifts with nine staff, including the captain, a fire apparatus engineer (FAE), and firefighters, of whom at least three are paramedics and two are EMTs (Rincon Fire Department, 2023a). Fire apparatus at the station includes one fire truck, two fire engines (one in reserve), one brush fire truck, and one rescue ambulance (Rincon Fire Department, 2023b).

The Rincon Band Tribal Law Enforcement Department provides law enforcement services to the Rincon Community, enforces Tribal ordinances, and provides other services, including servicing Tribal court documents (Rincon Band of Luiseño Indians, 2023a).

The Clinic is located approximately 1.4 miles northwest of the Proposed Project site. The Clinic is staffed weekdays during working hours (8 a.m. to 6:30 p.m.) with nurses, physicians, and other specialists, assistants, and other medical staff (Indian Health Council, 2023).

Other Public Services and Facilities. The Rincon Reservation is within the boundaries of the Valley Center-Pauma Unified School District (California State Geoportal, 2023). Schools that serve the Proposed Project site include Valley Center Primary School, Valley Center Middle School, and Valley Center High School (Valley Center-Pauma Unified School District, 2023).

The nearest library is the County of San Diego Valley Center Branch Library, located at 29200 Cole Grade Road, approximately 3.75 miles west of the Proposed Project site (San Diego County Library, 2023).

Hellhole Canyon County Preserve is located approximately 0.45 miles south, and Palomar Mountain State Park is located approximately 5 miles northeast of the Proposed Project site. There are also several campgrounds in the Proposed Project vicinity, the closest of which is the Woods Valley Campgrounds, approximately 4.5 miles to the southwest.

Water Service. The Rincon Band operates its own water system that provides domestic water service to the Rincon Reservation through groundwater wells.

Other Utility Services. There is no public sewer system on the Rincon Reservation. The San Diego Gas and Electric Company provides electrical power services to the Rincon Reservation and the Proposed Project site through an overhead power line along Valley Center Road.

AT&T provides telephone and telecommunication services to most areas of the Rincon Reservation. The Rincon Band provides solid waste collection services through Rincon General Services and also promotes recycling by providing a mobile recycling center and a transfer station for Tribal Members (Rincon Band of Luiseño Indians, 2023b), with recycling by EDCO Waste and Recycling Services at their facilities in Escondido and San Marcos and final disposal at the Sycamore Sanitary Landfill. This landfill is 603 acres and is permitted to accept 5,000 tons of waste per day, with a remaining capacity of 113.9 million cubic yards in December 2016 and an estimated closure date of December 2042 (CalRecycle, 2019).

3.7 Resource Use Patterns

The Proposed Project site is located in areas already developed as part of the Rincon Government Center.

On-Site Resources. The Proposed Project site is not subject to hunting, fishing, or gathering activities. There is no timber harvesting on the site. The site is not subject to agricultural activities and is not designated as Prime or Unique Farmland by the California Important Farmland Finder; it is designated as Farmland of Local Importance (California Department of Conservation, 2023b). The HRSC is located to the north of the Rincon PC4 Well site.

Traffic and Transportation. The Proposed Project site is located east of Valley Center Road/County Highway S6, which also provides site access via Omish Lane. Valley Center Road/County Highway S6 connects to State Route 76 (SR-76), approximately 2 miles north of the site. State Route 76 (SR-76) intersects with Interstate 15 (I-15) to the northwest, approximately 13 miles from the Proposed Project site. Valley Center Road is the major north-south roadway through the Rincon Reservation and provides access to Valley Center, Pauma Valley, and other communities east of I-15. It is a two-lane, undivided roadway. The entrance to the Proposed Project

site is unsignalized; however, turning lanes and a cycle lane are provided.

As part of the HRSC casino expansion project in 2012, intersection and roadway segment levels of service (LOS)¹ were estimated on Valley Center Road and other local and regional roads in the area and then analyzed against San Diego County's significance criteria from its *Guidelines for Determining Significance* (February 19, 2010). The Valley Center Road intersection at the southern casino entrance was operating at LOS B, and the Valley Center Road and Lake Wohlford Road intersection was operating at LOS C. The roadway segment between these two intersections was operating at LOS D. With the casino expansion and other cumulative projects in the area, the Valley Center Road intersection at the southern casino entrance was projected to continue to operate at LOS B, and the Valley Center Road and Lake Wohlford Road intersection was projected to continue to operate at LOS C. The roadway segment from these two intersections was projected to operate at LOS E. (PSOMAS, 2017).

North County Transit District (NCTD) Route 388 buses run along Valley Center Road from Valley Parkway in Escondido on the south to the Pala Casino on the north (NCTD, 2023). There is a bus stop on Valley Center Road and N Paradise Creek Lane, Morningstar Lane, approximately 0.45 miles to the southwest of the Proposed Project site (Google Maps, 2023).

Land Use Planning. The Proposed Project site is located within developed areas of the Rincon Reservation, which includes graded and compacted dirt and graveled industrial and utility lots. As previously mentioned, HRSC is located approximately 0.5 miles to the north. The Rincon Band Fire Department station is located approximately 0.4 miles to the southwest of the site, along Valley Center Road. Other land uses in the surrounding area include: agricultural, open space, low-density residential, commercial development, and the International Union of Operating Engineers training facility.

3.8 Environmental Justice

Existing residences and households near the Proposed Project site are occupied by tribal members or others who are not known to specifically be minority and/or low-income residents or households. According to the California EPA's Office of Environmental Health Hazard Assessment CalEnviroScreen, all lands under control of federally listed Tribes are considered Disadvantaged Communities (CalEPA 2022). This map shows the disadvantaged communities designated by CalEPA for the purpose of SB 535. Disadvantaged communities in California are specifically targeted for investment of proceeds from the state's Cap-and-Trade Program, investments aimed at improving public health, quality of life and economic opportunity in California's most burdened communities, and at the same time, reducing pollution that causes climate change. The investments are authorized by the California Global Warming Solutions Act of 2006 (Assembly Bill 32, Nunez, 2016). In 2012, Senate Bill (SB) 535 (De León, Chapter 830, Statutes of 2012) established initial requirements for minimum funding levels for "Disadvantaged Communities" (DACs).

¹LOS is a qualitative measure commonly used in NEPA traffic analysis to describe the condition of traffic flow, ranging from excellent conditions at LOS A to overloaded conditions at LOS F and based on vehicle delay, as measured in seconds or based on volume-to-capacity ratios.

3.9 Noise

Noise is defined as sound that is loud, unpleasant, unexpected, or undesired. The effects of noise on people can include general annoyance, interference with speech communication, sleep disturbance, and, in the extreme, hearing impairment. A typical noise environment consists of a base of steady “background” noise that is the sum of many distant and indistinguishable noise sources.

Superimposed on this background noise is the sound from individual local sources. Local noise sources can vary from an occasional aircraft or train passing by to intermittent periods of sound (such as amplified music) to virtually continuous noise from, for example, traffic on a major highway.

Ambient noise in the Proposed Project areas may be generated by well pumps and associated machinery, and heavy construction equipment, and cars/trucks using the nearby roads, parking area, and International Union of Operating Engineers training facility.

Noise-sensitive receptors generally refer to humans who are engaged in activities or are utilizing land uses that may be subject to the stress of significant interference from noise. Residential dwellings are the primary noise-sensitive land use because of the potential for increased and prolonged exposure to excessive, disturbing, or offensive interior or exterior noise levels that could interfere with sleep, relaxation, and other daily activities. Hospitals, schools, places of worship, hotels, libraries, and other places where low interior noise levels are essential are also considered noise-sensitive land uses. The nearest noise-sensitive receptors are the residential areas located to the east and west of the Proposed Project site.

3.10 Visual Resources

The Proposed Project site is a relatively flat and disturbed area. The existing visual characteristics around the site are defined by the PC4 Well machinery, disturbed graveled open space, sparsely vegetated open space (disturbed coastal scrub), the HRSC casino complex and hotel building to the north, and low-density residential areas. From local streets and public areas on the Rincon Reservation, the surrounding hills and mountains frame the Proposed Project site, particularly when looking from the east and west. The Proposed Project site does not present unique views of a scenic vista, nor does it include natural features, prominent ridgelines, dominant landforms, or scenic landscapes on-site.

The Proposed Project site is not in the vicinity of a National Scenic Byway or an All-American Road or near a designated wild and scenic river (Federal Highway Administration; National Wild and Scenic Rivers System 2023). The site is also not located along an officially designated State Scenic Highway and is not visible from the nearest eligible State Scenic Highway (SR-76), approximately 2 miles to the north (CalTrans, 2018).

3.11 Hazardous Materials

The Rincon Government Center does not have any activities involving hazardous material storage or use or hazardous waste generation or disposal. A review of the Department of Toxic Substances Control (DTSC) database, EnviroStor, shows no known existing hazardous waste facilities or contaminated sites on or near the Proposed Project site (EnviroStor, 2023). Also, according to the national pipeline mapping system, there are no gas transmission pipelines or hazardous liquid pipelines nearby (USDOT, 2023).

3.12 Public Health and Safety

The Proposed Project does not pose any public health or safety hazards in its current state. Wildfires have historically been an issue in the area (FRAP, 2022); the lack of brush vegetation and the relatively flat topography on-site result in a low level of concern for wildfire or brush fire hazards (FRAP, 2022; PSOMAS, 2017).

3.13 Wilderness Areas

The Proposed Project site is a developed area within the Rincon Government Center. Adjacent land consists of residential development to the east and west and partially disturbed open space to the north and south (PSOMAS, 2017). There are no wilderness areas on or near the site. Hellhole Canyon County Preserve is located approximately 0.45 miles southeast of the Proposed Project.

4 ENVIRONMENTAL CONSEQUENCES

This section provides an analysis of the potential environmental impacts of the Proposed Action (Preferred Alternative), and the No Action Alternative.

4.1 Land Resources

Proposed Action/Preferred Alternative

Under the Proposed Action, the Proposed Project site will be developed within the fenced PC4 Well site and neighboring industrial property parking area. The Proposed Action will result in construction of one permanent solar PV canopy, approximately 13 feet in height. The canopy will be supported by several steel support posts drilled into the ground to depths of 5 to 10 feet. The Proposed Project will also include a permanent concrete pad-mounted BESS in the fenced-in area, south of the main service panel and water pump. The proposed Project will also involve temporarily excavating approximately 185 linear feet of five-foot-wide trenches within the existing fenced PC 4 Well Site and adjacent graded dirt and graveled areas for installation of electrical utility conduit to tie into electrical panels located near the PC 4 Well's existing meters, main switchboard, generator, and utility power pole near 14 Acre Lane. The creation of these permanent and temporary utility features within an existing site would result in a minimal increase of impervious surface areas and would not lead to any major changes in topography.

Geology and Seismicity. The Proposed Action will not result in increased hazards from seismic faults in the area. Also, no hazards associated with liquefaction or significant dynamic settlement, landslide hazards, corrosion potential, tsunami or seiche hazards, or soil expansion hazards will likely affect the area as a result of the Proposed Action. The Proposed Project site may be impacted by ground-shaking hazards during an earthquake occurring at nearby faults, as on-site soils have a hydrocollapse potential with the estimated settlement being 1 inch (Geocon, 2023).

The Proposed Action has been designed and will be built in compliance with the Rincon Band's Amended Commercial Building Code (Tribal Resolution No. 2016-47). The engineering design of the Proposed Action infrastructure will also incorporate the recommendations of Geocon's project-specific preliminary geotechnical investigation to ensure the structural stability of the BESS and the PV carport canopies (Geocon, 2023). The geotechnical investigation includes specific measures for soil over-excavation and re-compactions to address possible hydrocollapse, reduce soil compressibility, and provide a more stable surface for fill placement. The preliminary geotechnical investigation also includes construction and other recommendations for site excavation, fill materials, foundation support and slabs, seismic design criteria, exterior concrete flatwork, lateral loading, and drainage. Thus, compliance with applicable engineering design regulations and geotechnical recommendations would prevent or reduce damage to the Proposed Project components and surrounding areas, resulting in less than significant adverse impacts with regards to geology and seismicity.

Mineral Resources. As discussed above, there are no known oil, gas, or geothermal fields in the Proposed Project site or area, and the site is not known to contain significant aggregate resources. Proposed Project construction will involve only very small areas of excavation into predominantly compacted fill soils. Therefore, the Proposed Action will not result in significant adverse impacts on oil, gas, or mineral resources.

Paleontological Resources. There are no known or suspected paleontological resources within or near the Proposed Project site, and Proposed project excavation is limited in area and depth. Therefore, the Proposed Action will not result in significant adverse impacts on paleontological resources.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes to topography of the site would occur. Therefore, under this alternative, no impacts to geology and seismicity, mineral resources, or paleontological resources would occur.

4.2 Water Resources

Proposed Action/Preferred Alternative

Surface Water Resources. Under the Proposed Action, construction activities within the Proposed Project site will not likely lead to the introduction of pollutants to the nearby San Luis Rey River or Paradise Creek. The Proposed Action will be in compliance with the Rincon Band Water Resources Protection Ordinance (Rincon Tribal Code §8.900; Attachment 4).

Implementation of the Best Management Practices (BMPs) listed above in Table 1, Section 2.0, will avoid or minimize any potential pollutant introduction and include soil stabilization, erosion control, sediment control, and waste management. With the implementation of the Tribal Code's Water Resources Protection Ordinance and these construction BMPs, the Proposed Action significant adverse impacts to surface water quality will not occur.

Groundwater Resources. Excavations associated with construction of the Proposed Project are not expected to exceed 10 feet in depth, which is above the expected perched groundwater table depth of 19.5 feet below ground surface, and thus will not directly affect underlying groundwater resources. The Proposed Project components will not require water use and will not require any water connection to an existing source. Under the Proposed Action, no significant impacts to groundwater resources are anticipated.

Flooding. Although the Proposed Project site is located within FEMA Flood Hazard Zone D (Area of Undetermined Flood Hazard), the Proposed Project will not significantly increase impermeable surface areas. Therefore, the Proposed Action will not result in an increase in flooding potential of the area, and no significant adverse impacts are anticipated.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes to existing water resources would occur. No changes relating to flooding of the Proposed Project site or vicinity would occur under this alternative.

4.3 Air Quality/GHG Emissions

Proposed Action/Preferred Alternative

Under the Proposed Action, construction activities will involve grading and excavation for PV panel and BESS foundations and electrical infrastructure trenching. These activities will require temporary soil stockpiles or exposed areas that could result in fugitive dust emissions.

The use of heavy equipment during construction will result in minimal generation of air pollutant emissions, and the small number of additional worker vehicle and truck trips to the construction site will contribute to ozone levels and particulate matter concentrations in San Diego County. Pollutant emissions will dissipate relatively quickly, will be temporary, and will cease upon completion of construction activities. Implementation of the actions included in BMP-5, as shown in Table 1 above, will reduce short-term minimal adverse air quality impacts under the Proposed Action to a less than significant level.

Under the Proposed Action, construction activities will generate GHG emissions from multiple sources, including construction equipment use, vehicle trips, energy use, and waste disposal. These emissions will be temporary. Due to the relatively small size of the project, GHG emissions from increased energy use and waste disposal will be minimal. During construction, GHG emissions will be minimized by implementing Air Quality/GHG BMP-5, as described in Table 1 in Section 2.0. Further, the scale of the Project is such that it is very unlikely to directly impact climate change. The BESS includes a built-in HVAC system that uses small amounts of the liquified gas, HFC-134 refrigerant, which is a known source product of GHGs. However, the small volume of HFC-134 refrigerant used by the BESS is similar to that used in typical commercial building HVAC systems and will be maintained in compliance with the BESS manufacturer guidance manual protocols. As such, GHG emissions from the Proposed Action will be minimal, and there will be no significant impacts to air quality or GHGs.

No Action Alternative

Under the No Action Alternative, the Proposed Project site would not be developed, and no changes to the existing use of the site would occur. No changes to air quality or GHG emissions would occur under this alternative.

4.4 Living Resources

Proposed Action/Preferred Alternative

Vegetation. The Proposed Project site is part of the existing disturbed Rincon PC4 Well site and adjacent dirt and paved roads and parking areas. No landscaped areas will be temporarily removed during BESS and carport PV canopy installation. The Proposed Project will attempt to avoid the one existing willow tree within the PC 4 Well site. If this willow tree is adversely affected by Proposed Project construction, it will be replaced in kind. Therefore, impacts to vegetation communities in the area are less than significant.

Wildlife. One federally listed species, the arroyo toad, is known to occur within the vicinity of the Proposed Project site. The habitats around the project site could support aestivating or foraging arroyo toads given the erosional features, proximity to two water features, and abundance of small mammal burrows in the soil. Although the existing fencing around the PC 4 Well site will act as an exclusion barrier around a portion of the work site, some excavation and work will occur outside of the fenced area. Thus, the Proposed Project has a slight chance that arroyo toads could be aestivating in the loose soils near or within the project area and a larger chance that arroyo toads could potentially forage within or pass through the project area, resulting in potentially adverse impacts to wildlife (TDI 2023, Attachment 3).

Implementation of the following proposed avoidance and protection measures to prevent arroyo toads from entering the project area, falling into the work holes and trenching, and burrowing into project excavations or spoils will reduce the potential adverse effects to wildlife.

- Prior to any clearing, grubbing, or construction, a temporary fence will be installed around the perimeter of the work, including any areas where spoils will be kept. The parking areas do not need to be flagged. Establishing the project perimeter and general mitigation plan for the project will be checked and must be approved by an FWS-approved biologist before work begins. Additional recommendations may be made once the work activities are fully understood. A brief environmental education session and/or handout may be recommended based on personnel and project activities. An on-call biologist will be available for any questions and to perform site visits if needed.
- Covering any trenching, pits, recently dug areas, and piles of spoils each night securely to the ground with a material that has no holes is recommended and essential to keep small wildlife from entering the site overnight. Caution should be taken when digging new areas and while uncovering the work site each morning in case something arrives on site overnight. Any fill/compact activities and digging should be performed in a fashion that minimizes active soil piles and open holes to minimize potential for impacts. Backfilling holes/trenches should be performed as necessary to reduce the number of active holes.
- If any frogs or toads are found adjacent to or within the Proposed Project area once work has begun, work will immediately stop, and the USFWS-approved biologist will be consulted. Work cannot begin again until approval is given by the USFWS-approved biologist. Allowing an arroyo toad into the project area could constitute a USFWS “take” of the individual, which, depending on circumstances, could shut down the project and/or lead to potential criminal charges and fines.

With the implementation of the measures outlined above, no direct or indirect impacts to the arroyo toad from the Proposed Project construction are anticipated. The Proposed Action will not result in adverse impacts on arroyo toad.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes to the existing vegetation communities would occur. No adverse impacts to vegetation communities or arroyo toads would occur under the No Action Alternative.

4.5 Cultural Resources

Proposed Action/Preferred Alternative

The Proposed Project site is already developed and mostly located within existing disturbed areas. No cultural resources are known to occur within or adjacent to the Proposed Project site (DACL, 2023). The results provided in the cultural assessment conducted for the Proposed Project site (DACL, 2023) support a finding of ***No Historic Properties Affected*** for this undertaking. Therefore, it is not likely that the Proposed Action will result in adverse impacts to cultural resources.

Despite the lack of surface indications of cultural or historic properties within the APE, there is always the potential for discovery of buried deposits during ground-disturbing activities. The monitoring efforts during the Government Center construction lacked documentation, making it unclear what areas and depths were monitored and where monitoring finds were discovered. Therefore, there is an unknown low potential for adverse effects to cultural resources from the Proposed Project. The following avoidance and minimization measures are recommended to be implemented to reduce potentially adverse effects:

- Cultural resource monitoring is recommended for all ground disturbances associated with the Proposed Project. If any inadvertent discoveries occur, all work in that location shall cease until an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards has been given the opportunity to assess the significance of the find and provisions under 36 CFR 800.13 are followed.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no adverse impacts to cultural resources would occur.

4.6 Socioeconomic Conditions

Proposed Action/Preferred Alternative

Due to the small size of the project, it is not likely that it will result in the creation of permanent construction-related jobs. Therefore, the size and short-term duration of construction will result in no noticeable changes in spending or wages in the area. Project operations and maintenance will not require permanent staffing and will therefore not result in an increase in employment opportunities in the area. The Proposed Action will not result in a change in the income, demographics, lifestyle, or cultural values of any employees in the area. Therefore, there will be no long-term changes to existing and forecasted socioeconomic conditions within the Rincon Reservation or surrounding areas as a result of the construction of the Proposed Project.

Fire and Police Protection Services. Development of the Proposed Project will include structures and infrastructure elements, particularly electrical systems and lithium-ion battery storage, that will introduce the possibility of creating a fire risk. The Proposed Project will be designed, constructed, and operated in compliance with the International Fire Code and pertinent standards of the National Fire Protection Association, as well as the instructions and provisions of the EPC Energy E90266-90kW/266kWh Outdoor BESS Product Specification (EPC 2022). Following these codes and provisions will reduce the potential for fires and the Proposed Project's demand for fire protection services from the Rincon Band Fire Department.

The Proposed Action will not result in an increase in potential property or personal crimes or an increased demand for fire and police protection. Therefore, no significant impacts to fire and police protection services will occur.

Other Public Services and Facilities. Limited construction workers may stay in the area temporarily during construction if they live further than 60 miles from the Proposed Project site. It is anticipated that most construction workers will reside in the local area and commute daily to the site. Therefore, the Proposed Action will not result in the need for additional residential dwellings or any additional support from public services or facilities. Since the development of the Proposed Project site will not attract additional residents to the area, school services, library services, parks or recreational facilities, or other public facilities will not experience any significant additional use or demand. Therefore, the Proposed Action will not result in significant adverse impacts to other public services or facilities.

Water Service. Under the Proposed Action, water service will not be required, and water demand will not increase. No adverse impacts to water demand will occur.

Other Utility Services. Utility service demands will be minor when compared to the capacities of existing service systems. No off-site community infrastructure upgrades will be required. During construction, waste disposal will be needed to dispose of construction waste. However, during operation, solid waste collection, recycling, or disposal services will not be required. Under the Proposed Action, adverse impacts associated with demands for other utility services will be minimal and less than significant.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes would occur to existing public services and facilities, medical, fire, and police protection services, water services, or other utility services.

4.7 Resource Use Patterns

Proposed Action/Preferred Alternative

On-Site Resources. Currently, the Proposed Project site is part of the Rincon PC4 Well area, located on previously disturbed and graded landscaped and paved areas. This area is not used by the public for recreation. As it is already developed, there will be no significant adverse impact on resource use patterns associated with hunting, gathering, timber harvesting, agricultural uses, or recreation.

Traffic and Transportation. Under the Proposed Action, construction activities would generate new vehicle trips to and from the site via Valley Center Road, Omish Lane, and 14-Acre Lane. This would include trips to bring in construction equipment, delivery and work trucks, and crew vehicles. However, construction-related vehicle trips would be temporary in duration and limited in number due to the small size of the Proposed Project. Construction activities will impact use of the parking area near the PC4 Well as some spaces will become inaccessible, particularly during trench digging and construction of the PV carport canopies. However, this impact will be limited while construction is taking place, and additional parking is available on nearby streets. Once operational, the Proposed Project will not generate significant additional traffic and will not reduce the number of parking spaces available. Therefore, there will be no significant adverse impacts to traffic and transportation.

Land Use Planning. The Proposed Project will not conflict with the developed areas to the north, west, and east of the site, including the residential areas to the west and east. The Proposed Action includes installing the solar PV carport within the adjacent International Union of Operating Engineers training facility. This facility is also on tribal land and will not require a tribal permit to change this small area of land use. The training facility property has ample remaining space to conduct its operations. Therefore, the Proposed Project will not result in significant adverse impacts to land use planning in the area.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes would occur to existing on-site resources, traffic and transportation, or land use planning in the area. No adverse impacts would occur.

4.8 Environmental Justice

Proposed Action/Preferred Alternative

The Proposed Action will not result in displacement or require the acquisition of any right-of-way, which could result in direct or indirect impacts to existing residences or employees. The Proposed Action will not result in adverse impacts to any facilities that provide services to minority or low-income residents or employees or result in greater air emissions, noise, or changes to transit service that would be most heavily borne by minority or low-income groups. Therefore, the Proposed Action will not have a disproportionate impact on minority and/or low-income communities, and no significant adverse impacts related to environmental justice will occur.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes would occur to existing facilities that provide services to minority or low-income residents or employees or result in greater air emissions, noise, or changes to transit service that would be most heavily borne by minority or low-income groups. No adverse impacts would occur.

4.9 Noise

Proposed Action/Preferred Alternative

Under the Proposed Action, noise from construction activities will occur but will be temporary and will cease upon project completion. Noise-sensitive receptors (residences to the east and west) will experience an increase in noise during the construction period. However, the overall construction impact is expected to be less than significant because construction activities will be limited in duration and frequency during daytime hours Monday through Friday. Furthermore, there will be no pile driving or blasting and minimal trenching and grading. Operational noise generated by the Proposed Project's BESS system will be reduced by its containment within a modular battery storage cabinet to comply with San Diego County General Plan acceptable exterior noise exposure levels for commercial/office land uses.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no new temporary or permanent sources of noise would occur to existing facilities. No adverse impacts would occur.

4.10 Visual Resources

Proposed Action/Preferred Alternative

The Proposed Project is not located along an officially designated State Scenic Highway and will not be visible from the nearest eligible State Scenic Highway (SR-76). However, Valley Center Road is identified as a County-designated Scenic Highway in the Open Space and Conservation Element of the County of San Diego General Plan (County of San Diego 2017). The Proposed Project construction and operation will result in minor changes to the Rincon PC4 Well site. Views of construction activities and construction equipment throughout the construction period may temporarily degrade the visual character of the area. However, as no nighttime construction work is anticipated to take place, construction of the Proposed Action will not be a source of nighttime light or glare. Overall, the limited project size and short-term duration of construction would reduce the impact of construction on visual resources in the area to a less than significant level.

During operation, the BESS will be mostly concealed from view by containment within white modular storage cabinets that will be partially blocked by existing development, vegetation, and parked vehicles. However, the new carport PV canopies over the existing adjacent parking area will be visible to passing motorists along 14-Acre Lane and to workers and visitors to the training facility to the south. It may also be visible to residents of nearby residential dwellings. This solar PV canopy will also be a new source of glare in the area. However, the size of the canopy will not be obtrusive, as any potential adverse impact will be mitigated by the visually permeable design (using canopy posts rather than walls). The solar PV panels will be affixed to the top of the canopy and will not be angled, so light will be reflected upwards, not to the side, reducing the possible impact of glare in the area. Finally, the Proposed Action has been designed in conformance with the aesthetic preferences of the Rincon Band. Under the Proposed Action, no significant adverse impacts to visual resources will occur.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no new facilities, structures, or land disturbance would change the visual character of the area. Thus, no adverse impacts to visual resources would occur.

4.11 Hazardous Materials

Proposed Action/Preferred Alternative

Under the Proposed Action, construction activities will require the use of heavy machinery (i.e., excavators, backhoes, and trucks). This type of equipment uses petroleum-based substances such as diesel, gasoline, and hydraulic fluid, which are considered to be hazardous materials. Construction may also involve the use of other hazardous materials, such as paint, solvents, oils, and other chemicals, which could pose an immediate risk to construction workers or lead to soil and groundwater contamination if not properly used, stored, or disposed of. By limiting the quantity and use of hazardous materials, implementing Hazardous Materials BMP-6 as listed in Table 1 in Section 2.0 above, and complying with the Rincon Band Hazardous Material Control Ordinance (Rincon Tribal Code §8.600; Attachment 5), the risk of an adverse effect from a hazardous material spill or release during project construction will be reduced to a less than significant level. The Proposed Project operations include lithium-ion batteries that are potentially hazardous due to high-voltage electrocution, flammability, and electrolyte leakage. The BESS also uses small amounts of antifreeze and HFC coolant to regulate the internal battery storage temperature. By implementing the BESS manufacturer's procedures, safeguards, and emergency response measures (EPC 2022), the potential for adverse impacts from the BESS-associated hazardous materials is low. Therefore, under the Proposed Action, no significant adverse impacts with regards to hazardous materials will occur.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes to existing facilities, structures, or operations would change. Thus, no adverse impacts from hazardous materials would occur.

4.12 Public Health and Safety

Proposed Action/Preferred Alternative

Wildfire or brush fire hazards on the Proposed Project Site are low due to the minimal amount of brush vegetation and its relatively flat topography. Under the Proposed Action, the Proposed

Project will be constructed and operated in accordance with tribal ordinances and applicable federal regulations that promote public health and safety. These include tribal regulations on public safety (Chapter 15 of the Tribal Law) and federal laws such as the Resource Conservation and Recovery Act, Toxic Substances Control Act, Occupational Safety and Health Act, Clean Air Act, and Clean Water Act. The Proposed Action would not increase the potential for public health and safety concerns, and no public health or safety hazards would be created. Therefore, under the Proposed Action, no significant adverse impacts with regards to public health and safety will occur.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes would occur to existing conditions for public health and safety within the site or vicinity. Thus, no adverse impacts to public health and safety would occur.

4.13 Wilderness Area

Proposed Action/Preferred Alternative

The Proposed Action will occur within the previously disturbed Rincon PC4 Well Site and will not disturb adjacent developed or undeveloped areas. There are no wilderness areas on or near the Proposed Project site. The Hellhole Canyon Preserve at Rodriguez Mountain is located approximately 1.4 miles southeast of the Proposed Project site. Therefore, the Proposed Action will have no impact on wilderness areas within the Rincon Reservation.

No Action Alternative

Under the No Action Alternative, the Proposed Project would not be developed, and no changes would occur to existing conditions. Thus, no adverse impacts to wilderness areas would occur.

4.14 Cumulative Impacts

A number of recent projects have been completed on the Rincon Reservation, which include the Travel Plaza beside the casino (completed 2014); a brewery (completed November 2017); a gift shop, 22 new rooms, and various remodeling projects at the casino (completed 2017); improvements on Omish Road (completed); a trail walk (completed 2016); and a chapel (completed spring 2019). Several of these projects are located near the site and have been completed. Thus, they are primarily part of the existing environmental conditions and would not contribute to the project's cumulative impacts.

SWELL Energy is planning two additional Solar Panel and Energy Storage Microgrid Installation Projects of similar size and scope on Rincon tribal lands within a mile of the Proposed Project site to be constructed within the next year.

Other topical areas such as geotechnical, hazardous materials, and cultural resources are site-specific, and all cumulative projects would be required to comply with the same tribal ordinances and applicable federal regulations that serve to reduce the potential for impacts. Given the limited environmental impacts of the Proposed Action, as discussed above, the Proposed Project would not contribute to cumulative impacts when considered with other projects planned or proposed in the Rincon Reservation. Cumulative impacts will be minimal and less than significant.

4.15 Mitigation

Avoidance and minimization measures included as part of the description of the Proposed Action are from the following technical reports prepared for the project:

- Arroyo Toad Avoidance and Minimization Measures (as outlined under Living Resources/Wildlife) from the Arroyo Toad (*Anaxyrus californicus*) Habitat Assessment for a DC Solar PV System at PC4 Well on the Rincon Reservation (TDI 2023), and as Attachment 3.
- Tribal Cultural Resources Monitoring for Inadvertent Discoveries (as outlined under Cultural Resources) from the Phase I Archaeological Investigation For The PC4 and BESS Battery Installation Project, Rincon Band of Luiseño Indians Reservation, San Diego, CA. (DACL, 2023), on file with the Rincon Environmental Department.

5 LIST OF CONTRIBUTORS

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7 LIST OF ATTACHMENTS

- 1: Rincon Band Business Leasing Regulations, Rincon Tribal Code §7.600
- 2: Figures
- 3: Arroyo Toad Habitat Assessment
- 4: Rincon Band Water Resources Protection Ordinance, Rincon Tribal Code §8.900
- 5: Rincon Band Hazardous Material Control Ordinance, Rincon Tribal Code §8.600

ATTACHMENT 1


Rincon Band Business Leasing Regulations, Rincon Tribal Code §7.600



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
APPROVAL OF THE RINCON BAND OF LUISEÑO MISSION
INDIANS RINCON BUSINESS LEASING REGULATIONS

The attached Rincon Business Leasing Regulations, submitted by the Rincon Band of Luiseño Mission Indians (listed in the Federal Register, 80 FR 1945 (Jan. 14, 2015), as the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California) and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 22 pages and adopted by the Rincon Band of Luiseño Mission Indians on August 31, 2013 and amended on December 12, 2014, is hereby approved.

Dated: JUN 04 2015



Assistant Secretary - Indian Affairs
United States Department of the Interior
Pursuant to the authority delegated by 209 DM 8

RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA



RINCON BUSINESS LEASING REGULATIONS
RINCON TRIBAL CODE §7.600

Adopted on August 21, 2013

RINCON BUSINESS LEASING REGULATIONS

Rincon Tribal Code §7.600

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RINCON BUSINESS LEASING REGULATIONS

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§ 7.600 **PURPOSE AND INTENT**

The Rincon Band of Luiseño Indians, also known as the "Tribe," is a sovereign Indian tribal government. The purpose of these Regulations is to implement the voluntary, alternative leasing process available to the Tribe pursuant to 25 U.S.C. § 415, as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), for business leases on Tribal trust land within the Rincon Reservation and any lands that may become Tribal trust lands within and beyond the exterior boundaries of the Rincon Reservation in the future. In addition, these Regulations are intended to promote political self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands held in trust for the Tribe.

§ 7.601 **AUTHORITY**

These Regulations are authorized by and subject to 25 U.S.C. § 415, as amended by the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), its implementing regulations 25 C.F.R. Part 162, and Section 6 of the Articles of Association of the Tribe.

§ 7.602 **DEFINITIONS**

- a) **"Assignment"** means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease.
- b) **"Attorney General"** means the official appointed by the Tribal Council as the Attorney General of the Tribe.
- c) **"Best Interest of the Tribe"** means the balancing of interests to attain the economic income, promote economic development, preserve and enhance Tribal Land, increase employment and revenue for the Tribe, and preserve the sovereignty of the Tribe.
- d) **"BIA"** means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior.
- e) **"Business Committee"** means the elected representatives of the Tribal Council authorized to exercise the executive powers of the Tribe pursuant to Section 6 of the Articles of Association.
- f) **"Business Day"** means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Federal Government is closed to the public.
- g) **"Business Lease"** means the same as Lease.
- h) **"Cancellation"** means Tribal Administrator or BIA action to end or terminate a Lease.
- i) **"Change in Land Use"** means the change in use of land from residential, commercial or industrial to another that differs significantly from its former use.
- j) **"Development Period"** means the time period between execution of the

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Lease to substantial completion of improvements on the Lease Premises.

- k) **"Day"** means a calendar day, unless otherwise specified.
- l) **"Environmental Review Process"** means the procedures for determining the significance of environmental impacts of a proposed development or Project as defined under Tribal Law regulations.
- m) **"Environmental Reviewer"** means the official of the Rincon Environmental Department designated by the Tribal Council to undertake the Environmental Review Process pursuant to Section 7.607 of these Regulations.
- n) **"Executing Official"** means an officer of the Tribal Council who is authorized pursuant to these Regulations to take all necessary action on Leases or Subleases, including execution, amendments and assignments of the same.
- o) **"Fair Annual Lease Value"** means the most probable dollar amount land should bring in a competitive market reflecting all conditions and restrictions of the Lease terms, including duration, rental adjustments, use restrictions, expense obligations or other considerations that drive commercial viability of proposed Project or development of land where both the Lessor and Lessee are equally motivated to consummate the Lease under the particular market conditions applicable to the transaction.
- p) **"Holdover"** means circumstances in which a Lessee remains in possession of the Lease Premises after the Lease term expires or has been cancelled.
- q) **"Lease"** means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Indian land, for a specified purpose and duration. The Lessee's right to possess will limit the Indian landowners' right to possess the Lease Premises only to the extent provided in the Lease.
- r) **"Lease Decision"** means the decision of the Tribal Council following completion of the Environmental Review Process with respect to approval of the issuance, amendment, sublease or assignment of a Lease.
- s) **"Lease Premises"** means the Tribal Land that is subject to a Lease approved by the Tribe pursuant to these Regulations.
- t) **"Leasehold Mortgage"** means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- u) **"Lessee"** means person or entity who has acquired a legal right to possess Indian land by a Lease authorized by these Regulations.
- v) **"Lessor"** means the Tribe who, as the owner of Tribal Land, conveys possessory interests in Tribal Land that is subject to a Lease authorized by these Regulations.
- w) **"LTRO"** means the Land Titles and Records Office of the BIA.

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- x) **"Mortgagee"** means the holder of a Leasehold Mortgage.
- y) **"Project"** means any improvement to Tribal Land that is subject to a Lease.
- z) **"Restoration and reclamation plan"** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
 - aa) **"Secretarial Procedures"** means the Secretarial Procedures, dated February 8, 2013, governing the gaming facility owned by the Tribe pursuant to 25 U.S.C. §2710(d)(7)(B)(vii).
 - bb) **"Significant Environmental Effect(s)"** means a substantial or potentially substantial, adverse change in the environment, including land, air, water, flora, fauna, ambient, noise, cultural areas and objects of historic, cultural or aesthetic significance.
 - cc) **"Space Lease"** means a lease of space within an existing facility or building on Tribal Land that is not a sublease.
 - dd) **"Sublease"** means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.
 - ee) **"Sublessee"** means a third party who receives a Sublease from a Lessee.
 - ff) **"Tribal Administration"** means the governmental administrative offices and departments of the Tribe responsible for managing programs and services on behalf of the Tribe within the Rincon Reservation.
 - gg) **"Tribal Administrator"** means official of the Tribal Administration responsible for implementation of these Regulations on the Tribe's behalf.
 - hh) **"Tribal Council"** means the same as Business Committee.
 - ii) **"Tribal land"** means any tract in which the surface estate is owned by the Tribe in trust status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).
 - jj) **"Tribe"** means the Rincon Band of Luiseño Indians of the Rincon Reservation, Valley Center, California, and the agencies, entities, arms and enterprises of the Tribe, as appropriate, either together or separately.
 - kk) **"Tribal Law"** means the body of non-Federal law that governs lands and activities under the jurisdiction of the Tribe, including ordinances or other enactments by the Tribe, and tribal court rulings.

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§7.603 **BUSINESS LEASE REQUIREMENTS**

- (a) **Terms and Conditions.** Any Lease authorized by these Regulations shall be governed by terms and conditions set forth in the Lease. The terms of the Lease may be amended by written approval of the Lessee and the Tribal Council. The Lessee is responsible for understanding the terms and conditions set forth therein.
- (b) **Duration and Renewal.** Unless otherwise expressly provided in the Lease, no Lease shall be approved more than twelve (12) months prior to the first day of Lease term.
- The Lease term shall not be more than twenty-five (25) years except that a Lease may include an option to renew for two (2) additional terms, provided that each term of which shall not exceed twenty-five (25) years. Unless otherwise expressly provided in the Lease, the Lessee shall notify the Tribal Council of the intent to renew not less than one (1) year prior to the expiration date set forth therein.
- (c) **Obtaining a Business Lease.** Information to obtain a Business Lease shall be available from the Tribal Administration office.
- (1) Any applicant for a Business Lease must submit the following documents to the Tribal Administrator;
- (A) Financial statement;
- (B) Site survey and legal description, if applicable;
- (C) Environmental Review Process documents; and
- (D) Any other documents deemed necessary by the Tribal Administrator pursuant to the Tribe's Business Lease procedures.
- (2) A Business Lease shall contain the following provisions:
- (A) The tract, location or parcel of Tribal Land subject to the Lease.
- (B) The purpose and authorized use of the Tribal Land subject to the Lease.
- (C) The parties to the Lease.
- (D) The Lease effective date, term and provisions for renewal, if any.
- (E) Identification of the party(ies) responsible for ownership of the permanent improvements and the party(ies) responsible for construction, operation, maintenance and/or management of the permanent improvements to the Tribal Land subject to the Lease.
- (F) Indemnification of the United States and Lessor for the Lessor's use and occupancy of the Tribal Land

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subject to the Lease.

- (G) Payment and late payment requirements, including, the party to receive the rent, acceptable forms of payment, due date for payment, late payment penalty(ties) and interest.
 - (H) Due diligence, insurance and bonding requirements. If a performance bond is required pursuant to Section 7.603(i) of these Regulations, the Lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.
 - (I) A provision that expressly includes the following language: "If the Lease Premises are within an Indian irrigation project or drainage district except as provided by 25 CFR 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."
 - (J) Removal and restoration plan requirements applicable to the Lease Premises at expiration or cancellation of the Lease.
 - (K) Timelines, if any, for Lease approval, requirements for Tribal Council approval and the Executing Official authorized to execute the Lease.
 - (L) The requirements for Tribal Council approval of any amendments, assignments, subleases and Leasehold Mortgages, and the Executing Official authorized to execute any amendments, assignments, Subleases and Leasehold Mortgages during the Lease term.
- (3) The Tribal Administrator shall cause the Lease, any amendments, renewals and cancellations to be recorded with the LTRO, Pacific Regional Office having jurisdiction over the Tribal Land subject to the Lease.
- (4) The Tribal Administrator is responsible for maintaining all records of any Business Lease with original execution documents to be maintained by the Attorney General.
- (5) The Tribal Council shall cause copies of these Regulations and any Business Lease, amendments, renewals or cancellations to be sent to the BIA Superintendent, Southern California Agency, 1451 Research Park Drive, Riverside, CA 92507.
- (6) Records of activities taken pursuant to these Regulations are the property of the Tribe. Records compiled, developed or

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received by the Secretary are the property of the Secretary.

- (d) **Space Leases.** To the extent any Space Lease requires approval pursuant to any federal law and policies, a Space Lease shall be reviewed and approved pursuant to these Regulations.
- (e) **Land Descriptions.** A Business Lease shall contain site surveys and legal descriptions based on metes and bounds, rectangular lot and block systems and/or be of sufficient detail to meet recording requirements for the LTRO having jurisdiction of the Tribal Land subject to the Lease. A Space Lease shall contain accurate descriptions of square footage and may include renderings, drawings or other schematics to illustrate the location of the physical space to a specific location upon a tract land subject to the Lease.

(f) Appraisals; Local Studies.

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

(g) Fair Annual Lease Value.

- (1) No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal log maintained in the Lease file, except:
 - (A) Where improvements to Tribal Land which will be subject to a Lease are in the pre-Development Period, e.g., design, permitting and financing;
 - (B) When the Tribe is attempting to attract business development through market incentives; or
 - (C) Where the Tribal Council determines the Lease is in the Best Interest of the Tribe.
- (2) A Lease may be structured as a flat lease rate.
- (3) A Lease may be structured as a flat lease rate plus a percentage of gross receipts, provided that the Lessee generates over \$500,000.00 annually in gross receipts.
- (4) A Lease may be structured on a market indicator.
- (5) A Lease must specify the date payments are due and that payments shall be made directly to the Tribe.
- (6) Unless provided in the Lease, payments may not be

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made or accepted more than eighteen (18) months in advance of the due date.

- (7) A Lease may provide for periodic review and such review may give consideration to prevailing market conditions, exclusive of the improvements or development required by the Lease or the contribution value of such improvements.
- (8) A Lease may be structured to allow for payment adjustments, provided that the Lease specifies the terms and procedures for adjustments and the terms and conditions of dispute resolution.
- (9) A Lease may be amended to allow for payment rate adjustments.
- (10) The Tribal Administrator shall keep written records of the basis to determine Fair Annual Lease Value, or any adjustment thereof. The records shall be presented to the Lessee and included in the Lease file.

(h) **Environmental Review Process.** Subject to Section 7.607(b)(l), the Tribal Council shall not approve a Business Lease until completion of the Environmental Review Process pursuant to Section 7.607. Any Lease approved and executed by the Tribal Council in violation of these Regulations shall be null and void.

(i) **Insurance.**

- (1) A Lessee shall provide insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable improvements on the Lease Premises.
- (2) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.
- (3) The United States and the Tribe shall be additional insureds under any policy of insurance required by the Lease.
- (4) The Tribal Council may waive the insurance requirement(s) if the waiver is deemed to be in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

(j) **Performance Bond.**

- (1) Unless waived in writing by the Tribe pursuant to this Section 7.603(j)(2) of these Regulations, the Lessee shall obtain a performance bond in an amount sufficient to secure performance of the obligations of the Lessee

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pursuant to the Lease. The bond may guarantee:

- (A) Annual Lease payments;
 - (B) Estimated development costs of the improvements; and
 - (C) Any additional amounts necessary to ensure compliance with the Lease.
 - (2) The Tribal Council may waive the bond requirement, or reduce the amount, provided that the waiver or reduction is deemed to be in the Best Interest of the Tribe. Any waiver pursuant to this Section 7.603(j)(2) shall be in writing and maintained with the Lease file. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.
 - (3) The performance bond may be in one of the following forms:
 - (A) A certificate of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (B) An irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States, or
 - (C) Negotiable Treasury securities or surety bond issued by a company approved by the United States Department of the Treasury.
- (k) **Improvements.** All Leases shall require the Lessees to exercise due diligence and best efforts to complete pre-development and construction of improvements within the schedule specified in the Lease.
- (1) Lessee, at its expense or as otherwise provided in the Lease, may construct improvements on the Lease Premises if the Lease provides for:
 - (A) Site development and construction of improvements to be erected thereon, and
 - (B) A development schedule, including dates for the commencement and completion of construction.
 - (2) The Lessee shall provide the Lessor written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
 - (3) When requested by the Lessor or otherwise required in the Lease, Lessee shall further provide the Lessor, in writing, an updated schedule for construction.

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- (4) Failure of the Lessee to comply with this subsection (k) will be deemed a violation of the Lease and may lead to cancellation of the Lease pursuant to Section 7.605 of these Regulations.
- (5) Improvements to the Lease Premises shall become the property of the Lessor unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.
- (6) A Lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Lessor shall have a right of first refusal to purchase the Lessee's interest in the Lease unless the terms of the Lease provide otherwise.
- (7) The Lease may provide that at expiration or cancellation of the Lease, the Lessor shall purchase improvements to the Lease Premises at fair market value.
- (8) Improvements may be subject to taxation by the Tribe.

(I) Subleases, Assignments, Amendments and Leasehold Mortgages.

- (1) Subleases, Assignments, amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.
- (2) The effective date, term and provision for renewal, if any, shall be set forth in Subleases, Assignments, amendments or Leasehold Mortgages.
- (3) The Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Lessor, provided that a copy of the
- (4) Sublease or Assignment is provided to the Lessor and the following conditions, where applicable, are satisfied and stated in the Lease:
 - (A) There is no event of default under the Lease or these Regulations;
 - (B) Any restrictions and use limitations on the use of the Lease Premises shall continue to apply to any Sublessee or assignee;
 - (C) The proposed assignee or Sublessee submits a current financial statement showing financial capacity to perform Lease obligations; and
 - (D) The Lessee shall not be relieved or released from any of its obligations under the Lease.
 - (E) This Section 7.603(1) in no way releases the duties

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or obligations of the parties under the Lease, which may contain additional restrictions and conditions.

- (5) The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and improvements to the Lease Premises subject to the approval of the Lessor.
- (6) If a sale or foreclosure of the Lessee's business or assets occurs and the person with a legal right or interest in the property ("Encumbrancer") is also the purchaser, the Encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided that the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, provided that the purchaser agrees in writing to be bound by all terms and conditions of the Lease.
- (7) **Lease Approval.** Any Lease authorized by these Regulations shall be approved by the Tribal Council.

§7.604 BUSINESS LEASE MANAGEMENT

(a) Management.

- (1) Except where required otherwise by agreement or applicable law, the Lessor shall manage all Leases pursuant to these Regulations.
- (2) The Tribe shall enact a Business Lease management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

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

§7.605 ENFORCEMENT

- (a) **Generally.** The Tribe shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with its Business Lease management plan. This includes the power to enter the Lease Premises at a reasonable time, with or without notice and assess late payment penalties.

(b) Defaults.

- (1) If the Tribal Administrator determines the Lessee is in default, the Tribal Administrator shall send the Lessee a notice of default within five (5) Business Days of the determination. The notice of default may be provided by certified mail, return receipt requested.
- (2) Within ten (10) days of the receipt of mailing, the Lessee shall:

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- (A) Cure the default and notify the Tribal Administrator in writing that the default has been cured; or
- (B) Dispute the Tribal Administrator's determination that the Lease is in default and explain why the Lease should not be canceled; or
- (C) Request additional time to cure the default.

(c) **Remedies.**

If the Lessee fails to cure the default within the proscribed period, the Tribal Administrator may:

- i. Cancel the Lease pursuant to these Regulations;
- ii. Grant an extension of time to cure the default;
- iii. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
- iv. Any combination of remedies listed above; or
- v. Any other remedy set forth in the Lease or Business Lease management plan or policy.

(d) If the Tribal Administrator cancels a Lease, the Tribal Administrator shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:

- i. Explain the grounds for Lease cancellation;
- ii. Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
- iii. Notify the Lessee of its right to appeal; and
- iv. Order the Lessee to vacate the Lease Premises within thirty (30) days of receipt of the cancellation letter, if an appeal pursuant to Section 7.606 is not filed by that time.

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

(f) If the Tribal Administrator decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

(g) **Penalties.** The Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Lease

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shall identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Tribe, and the failure to pay such amount shall be treated as a breach of the Lease.

- (h) **Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the Lease Premises, or undertakes criminal activity thereon, the Tribe may take appropriate emergency action.
- (i) **Holdover.** If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribe may treat such occupation as a trespass. If the holdover is treated as a trespass, the Tribe shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to all applicable Tribal laws, or alternatively, the Tribe may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.
- (j) **Trespass.** If a person occupies the Lease Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal law. The BIA may, upon reasonable notice from the Tribe and at BIA's discretion, enforce the provisions of, or cancel, a Lease.

§ 7.606 APPEALS

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

§ 7.607 ENVIRONMENTAL REVIEW PROCESS

- (a) **Generally.** Unless exempt under this Section 7.607, the Tribe shall not approve a Lease until the proponent of the Lease has completed the Environmental Review Process pursuant to this Section 7.607 and applicable Tribal Law. Leases approved and executed without compliance with this Section 7.607 shall be null and void.
- (b) **Threshold Determination.**

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- (1) Lessee Not Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Lease Decision by its nature would not: i) impact, ii) alter, or iii) otherwise cause physical disturbances to the biological, natural and cultural resources of the Tribe, the Lease Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal Law.
- (2) Lessee Subject to Environmental Review Process:** If the Environmental Reviewer determines that the Lease Decision might be expected to: i) impact, ii) alter or iii) otherwise cause physical disturbances to the biological, cultural or natural resources of the Tribe, the Lessee must fulfill the requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal Law. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the Project.
- (3) Statutory Exemption for Leases in Gaming Facility:** Subject to the environmental review requirements established by the Secretarial Procedures, a Lease Decision involving a Lease proposing use of space within the footprint of the Tribe's Gaming Facility, as that term is defined pursuant to the Secretarial Procedures, shall be exempt from the Environmental Review Process, and the proponent of the Lease shall not be required to prepare a TEIR (defined below) under subsection (d) below.
- (c) Action on Lease Decision Subject to Completion of Environmental Review Process.** If the Environmental Reviewer determines that the Lease Decision is subject to the Environmental Review Process, the Tribe may not consider the Lease Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal Law.
- (d) Environmental Review Process.**

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

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shall include a detailed statement setting forth all of the following:

1. A description of the physical environmental conditions in the vicinity of the development Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
2. All Significant Environmental Effect(s) of the proposed Lease;
3. In a separate section:
 - a. Any Significant Environmental Effect(s) that cannot be avoided if the Lease is executed; and
 - b. Any Significant Environmental Effect(s) that would be irreversible if the Lease is executed.
 - c. Any mitigation measures proposed, recommended, or required.
- ii. In addition to the information required pursuant to this subsection (d), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Environmental Effect(s) shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

b. Notice of Completion of Draft TEIR.

- i. Within no less than thirty (30) days following the completion of the draft TEIR, the Environmental Reviewer shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Environmental Reviewer shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
 1. A brief description of the Project;
 2. The proposed location of the Project;
 3. An address where copies of the draft are available; and
 4. Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- ii. To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. § 415, the Tribe will provide public notice by at least one (1) of the procedures

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specified below:

1. Publication of the draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Lease, with notice to the public of the opportunity to comment on any Significant Environmental Effect(s) of the proposed action.
 2. Posting of the draft TEIR in the offices of the Tribe and the Environmental Reviewer's office with notice to the public of the opportunity to comment on any Significant Environmental Effect(s) of the proposed action.
- c. **Response to Public Comments.** After the thirty (30) day comment period has ended, the Environmental Reviewer will review all comments received from the public.

In accordance with Section 7.607(e)(2) of these Regulations and prior to the approval and execution of the Business Lease, the Environmental Reviewer will provide responses to relevant and substantive public comments on any Significant Environmental Effect(s) arising as a result of the proposed Project and proposed or recommended mitigation measures addressing any such impacts. All responses of the Environmental Reviewer will be published in a newspaper of general circulation in the area affected by the Business Lease and posted in the offices of the Tribe and the Environmental Reviewer's office.

§7.608 **SOVEREIGN IMMUNITY**

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

§7.609 **EFFECTIVE DATE**

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

§ 7.610 **SEVERABILITY**

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

§ 7.611 **AMENDMENTS**

These Regulations 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 amendments to these Regulations

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must be submitted to and approved by the secretary of the Interior.

ATTACHMENT 2
Figures



FIGURE 1
Regional Location



SOURCE: ESRI, 2024; Montrose Environmental, 1/3/2024

Rincon PC4 Well TEIR / 223540 ■

Figure 1
Regional Location

FIGURE 2
Site Plan

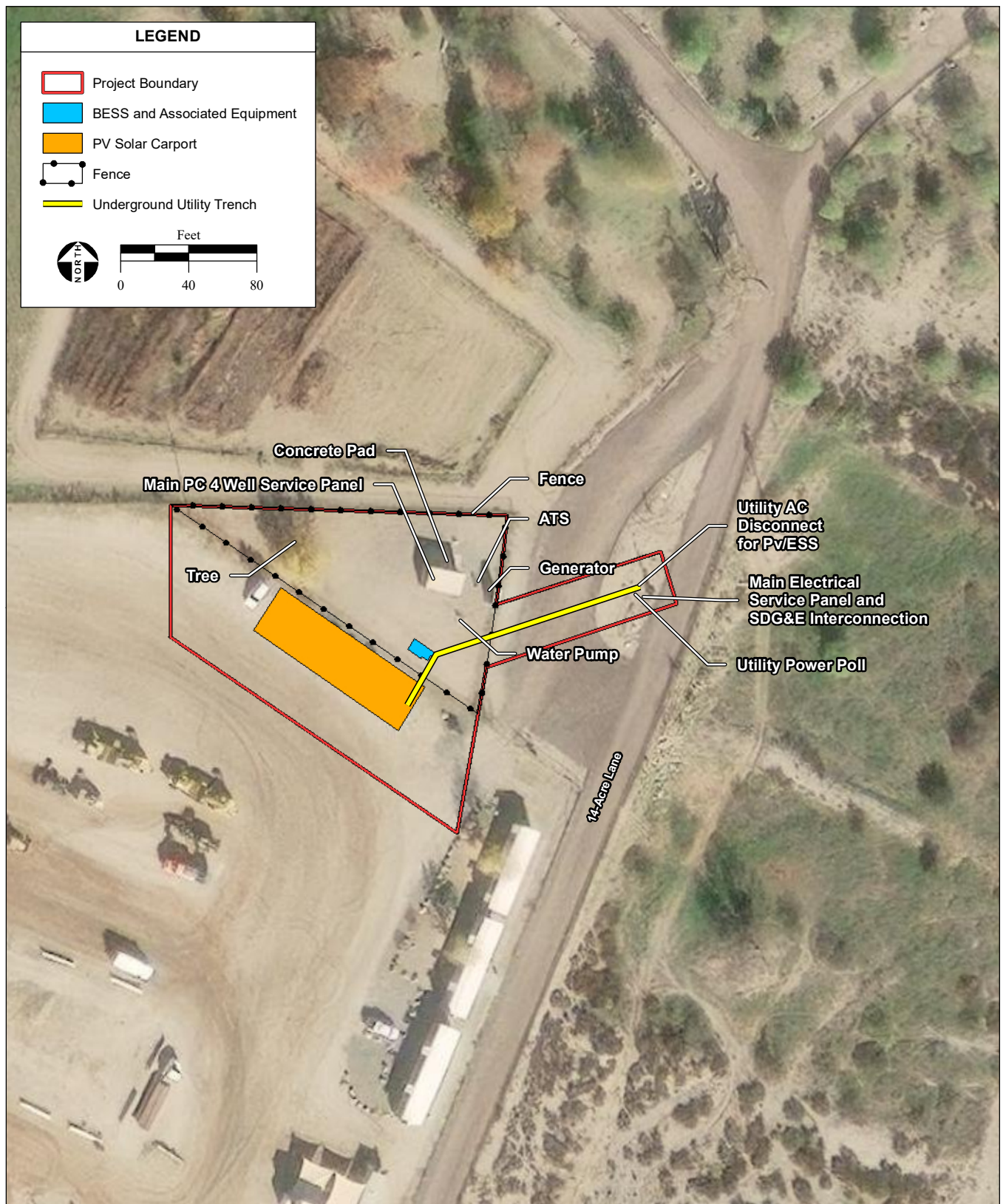
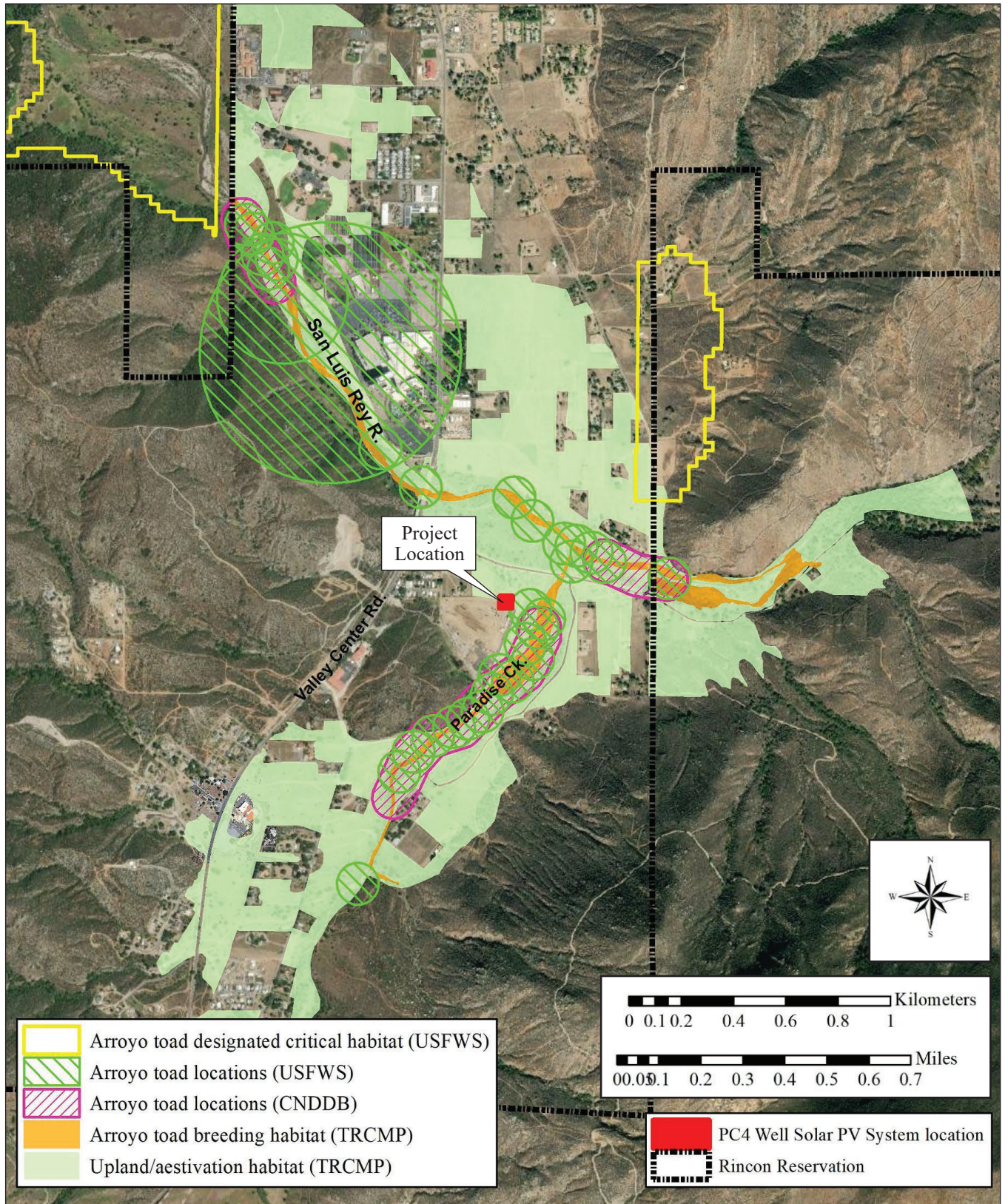


FIGURE 3
Project Arroyo Toad Occurrence Locations



SOURCE: Tierra Data, 6/9/2023; Montrose Environmental, 1/5/2024

Rincon PC4 Well TEIR / 223540 ■

Figure 3
Arroyo Toad Occurrence Locations

ATTACHMENT 3
Arroyo Toad Habitat Assessment



December 16, 2021
Updated December 17, 2023

Swell Energy
ATTN: Lance Honea
lhonea@swellenergy.com

Subject: Summary of Arroyo Toad (*Anaxyrus californicus*) Habitat Assessment for a Battery Energy Storage System (BESS) at the Rincon Reservation Tribal Administration Building

Dear Mr. Honea,

Tierra Data Inc. (TDI) is pleased to submit this letter summarizing the habitat assessment conducted for arroyo toad for the battery energy storage system (BESS) component of the Rincon Reservation Tribal Administration PV Microgrid Project (project). The project is located at 1 Government Center, Valley Center, CA, just east of Valley Center road (Map 1).

The BESS project will install a grid connected 174kW/696kWh Tesla Powerpack battery energy storage system. The BESS will be pad mounted in the parking space immediately east of Rincon's existing fenced in generator and main 800A service panel. Underground conduit will connect the BESS to the a) Main panel, b) the generation panel, and c) the main distribution panel in the north side of the building. Construction of the pad and of the conduits will involve digging in the soil at the site.

SURVEY DESCRIPTION

TDI biologists Ben Van Allen and Harry Smead assessed the habitat at and around the Tribal Administration Building for arroyo toad (*Anaxyrus californicus*) suitability on December 15, 2021. Prior to surveying, the biologists consulted the Rincon Tribal Resource Conservation Plan (TRCMP, 2018) and its habitat mapping for arroyo toad as well as the California Natural Diversity Database and the USFWS species occurrence database within the vicinity of the project area (State of California 2021, USFWS 2021).

ARROYO TOAD

No suitable breeding habitat exists for arroyo toad within the project or survey area. The project footprint is likely entirely within paved areas of the current Rincon Reservation Tribal Administration Building, and the habitat within the entire survey area is neither optimal aestivation habitat nor close enough to Paradise Creek to be likely to be used. However, the TRCMP classifies Upland/Aestivation Habitat as areas within ½ a mile (805m) or 85 feet elevation from the nearest breeding habitat, with friable soils and less than 75% cover of invasive non-native species such as bromes. The project area is just over 1,700 feet (525m) from Paradise Creek, and the nearest recorded arroyo toad was found at that closest point (Map 2). The soils in the survey area are Visalia sandy loam 5 to 9 percent slopes, a soil of alluvial fans which is approximately 2/3 sand with lesser amounts of clay and organic matter (NRCS 2021). This is not an optimal soil type for arroyo toad, but it is friable and the habitats

around the Rincon Reservation Tribal Administration Building could additionally support aestivating or foraging arroyo toads given the numerous mammal burrows in the soil. The vegetation community across much of the survey area outside of the Tribal Administration Building footprint is very disturbed and open, with a mix of native and non-native understory species and scattered native shrubs (Map 3). There are no significant barriers between the project site and known arroyo toad habitat. Kuutpat Creek, an ephemeral drainage leading to Paradise Creek, is immediately south of the Rincon Reservation Tribal Administration Building within the survey area. This is a high gradient drainage which is very unlikely to ever support arroyo toad breeding, but it provides a direct corridor for foraging arroyo toads to travel to the building and project area.

In summary the project is very unlikely to dig outside of paved and landscaped areas of the Rincon Reservation Tribal Administration Building grounds. As a result, it has no chance of impacting aestivating arroyo toads. However, there is a small chance that arroyo toads could be aestivating near the project area, and a larger chance that arroyo toads could forage in the area of the project. As a result, we propose mitigation measures to prevent arroyo toads from entering the project area and from burrowing into project excavations or spoils.

PROPOSED MITIGATION MEASURES

Prior to any clearing, grubbing and construction, a temporary fence will be installed around the perimeter of work, including any areas where spoils will be kept. The fencing will be of woven nylon fabric or equivalent at least two feet high. Over soil it must be staked firmly to the ground, and the lower one foot of fencing will stretch outward along the ground and be secured with a continuous line of sandbags to prevent burrowing under the fence. Over pavement the fence must be secured to the ground in a similar way that would prevent a small animal from slipping under it. The construction of the fence and general mitigation plan for the project will be checked and must be approved by an FWS-approved biologist before work begins.

Covering any trenching, pits, recently dug areas and piles of spoils each night securely to the ground with a material that has no holes is recommended, and essential if there is any area that a fence cannot be kept up around overnight.

If any frogs or toads are found adjacent to or within the project area once work has begun. Work will immediately stop, and the FWS-approved biologist will be called. Work cannot begin again until approval is given by the FWS-approved biologist. Allowing an arroyo toad into the project area could constitute a USFWS “take” of the individual, which, depending on circumstances could shut down the project and/or lead to potential criminal charges and fines.

For any questions regarding the work conducted or its results presented here, please contact Ben Van Allen (ben@tierradata.net, 614-499-3271).

Sincerely,

TIERRA DATA, INC.



Benjamin Van Allen – Senior Ecologist

PhD Ecology and Evolutionary Biology, Rice University 2014

Works Cited

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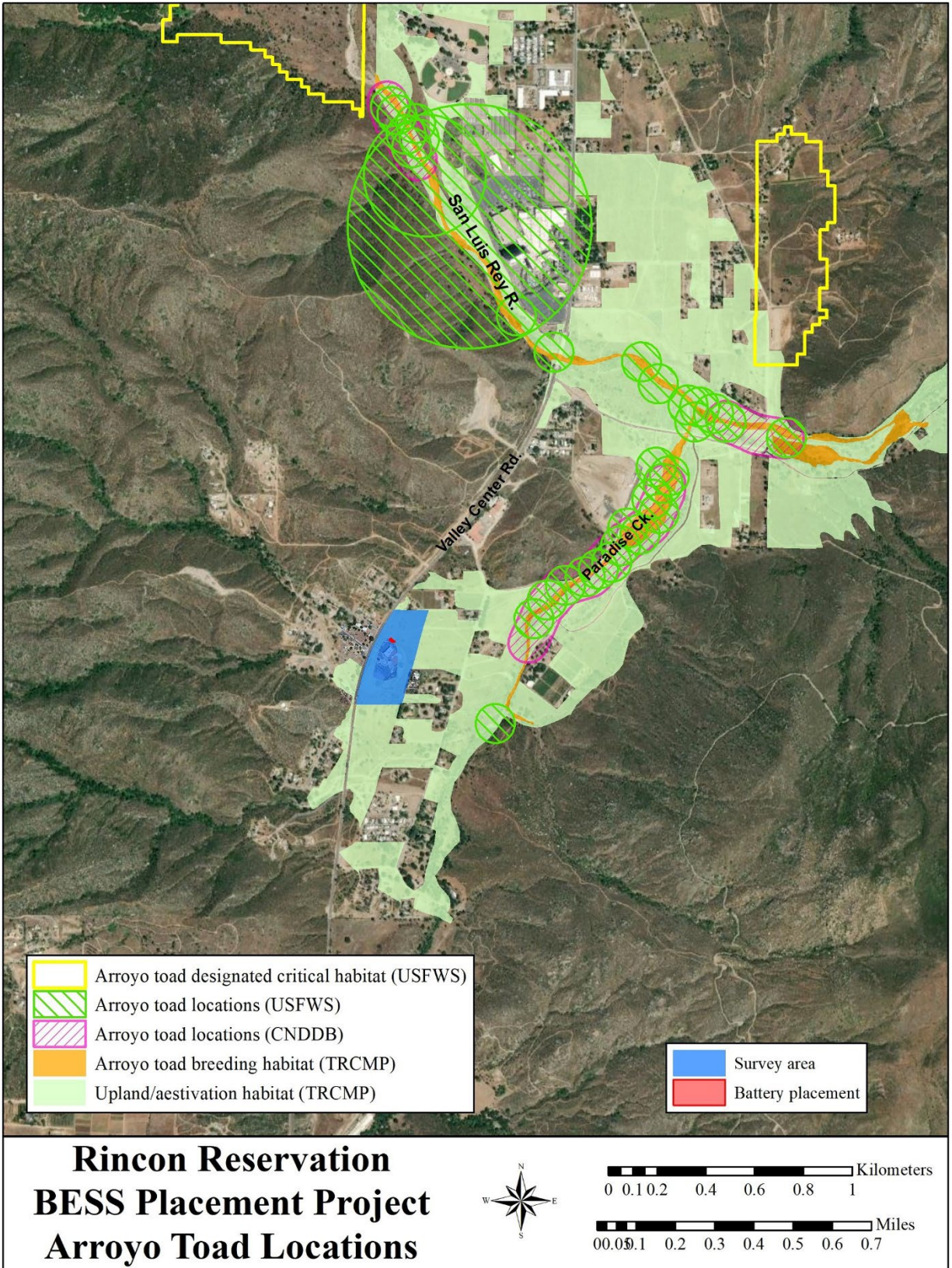
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Map 1. Regional Project Location.



Map 2. Project Vicinity to Special Status Species.



Map 3. Project Survey Area Vegetation. Note the project depicted here is not the final project and may change. The current version of the project up for approval is shown in Map 4.



Map 4. The current project plans.

ATTACHMENT 4

Rincon Band Water Resources Protection Ordinance, Rincon Tribal Code §8.900

**RINCON BAND OF LUISEÑO MISSION INDIANS RINCON
INDIAN RESERVATION, CALIFORNIA**



**RINCON WATER RESOURCES PROTECTION ORDINANCE
RINCON TRIBAL CODE § 8.900
Adopted on January 30, 2013**

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GENERAL PROVISIONS

§ 8.901 FINDINGS

The Rincon Band of Luiseño Mission Indians is a federally recognized Indian tribe which exercises jurisdiction over the lands within the external boundaries of the Rincon Reservation, consistent with its Articles of Association and Tribal Laws and the Constitution and laws of the United States and finds as follows:

- (a) All Rincon Band tribal reserved water rights are held by it in trust to fulfill the purposes of the Rincon Reservation as a permanent, economically productive homeland for the Rincon people and for certain inalienable public and cultural uses.
- (b) The rights of the Rincon Band to water reserved pursuant to the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, shall be protected and preserved, and nothing in this Ordinance shall be deemed to be a waiver or limitation on these rights.
- (c) The reserved water rights of the Rincon Band apply as a matter of law to both surface and ground water to the extent needed to accomplish the purposes of the Rincon Reservation.
- (d) The ground water resources of the Rincon Reservation are insufficient to fulfill the present and future homeland purposes of the Rincon Reservation.
- (e) The power to determine, control, and manage the proper uses of all Rincon Reservation Water, including all tribal reserved water rights, is an essential attribute of sovereignty and belongs to the Rincon Band.
- (f) Adequate supplies of clean water are vital to the health and welfare of the Rincon Band and its members, other Rincon Reservation residents, and to the vitality of the Rincon Reservation economy.
- (g) Protection of the public interest in surface and ground water resources of adequate quantity and quality requires the development and effective implementation of integrated land and water resource management programs and coordination of this Ordinance with other environmental and resource protection laws, including, but not limited to, the Utilities Ordinance, the Environmental Enforcement Ordinance, Rincon land use and zoning ordinances, the U.S. Clean Water Act, Safe Drinking Water Act, National Environmental Policy Act, Endangered Species Act, and other applicable Tribal Laws and federal laws.

§ 8.902 PURPOSES

The purposes of this Ordinance are:

- (a) to protect the health and welfare of all members of the Rincon Band and

other Rincon Reservation residents;

- (b)** to support and help achieve the Rincon Band's spiritual, cultural, and economic goals through the protection, enhancement, and restoration of Rincon Reservation Water;
- (c)** to protect the political integrity and economic security of the Rincon Band through an effective, orderly system for the administration, use, conservation, and management of all Rincon Reservation Water, including all Rincon Band tribal reserved water rights;
- (d)** to protect Rincon Reservation Water from over-appropriation, Degradation, Contamination, and any acts injurious to the quantity, quality, or integrity of the water;
- (e)** to promote optimal use, recharge, and protection of Aquifers to supply beneficial uses;
- (f)** to ensure that the Rincon people have sufficient water quantity and quality for cultural, domestic, economic development, navigation, agricultural, stock, ecological flow, municipal, industrial, and other uses; to ensure that the Rincon Band has sufficient water quantity and quality for Rincon Reservation uses now and for generations to come; and to ensure equitable and culturally appropriate water allocation at all times including during times of low water availability; to encourage planned development and multiple use of the Rincon Reservation Water resources, promote stability of investment in water use and delivery systems, and permit all reasonable beneficial uses;
- (g)** to provide for the orderly resolution of disputes over the management, administration, and permitting of Rincon Reservation Water under this Ordinance;
- (h)** to coordinate the administration and environmental protection of Rincon Reservation Water with other governmental agencies or bodies performing related duties and responsibilities affecting Rincon Reservation Water, such as the Rincon Tribal Administration, the Rincon Environmental Department, the Rincon General Services, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, the California Department of Health, and local governmental agencies.

§ 8.903 DEFINITIONS

The following terms have the following meanings in this Ordinance:

- (a) **“Acre-foot”** means the quantity of water required to cover one acre to a depth of one foot; one acre-foot of water equals 43,560 cubic feet or 325,851 gallons of water.
- (b) **“Adjacent Wetlands”** means wetlands bordering, contiguous, or neighboring “waters of the United States” as defined by 33 C.F.R. part 328, as amended from time to time.
- (c) **“Affected person”** means any Person directly affected by a final decision, order, or action issued or taken by the Manager or Tribal Council under this Ordinance.
- (d) **“Agriculture”** means activity related to the production of horticultural, silvicultural, viticultural, foricultural, dairy, apiary, vegetable, or animal products; or of berries, grain, hay, straw, turf, seed, Christmas trees, hybrid poplar trees, or livestock.
- (e) **“Aquifer”** means an underground geological formation, or group of formations, containing usable amounts of ground water that can supply wells and spring.
- (f) **“Aquifer Storage Volume”** means a quantitative estimate of the volume of ground water in an Aquifer based on the best available technical information and sound scientific principles.
- (g) **“Beneficial use”** means the use of water for purposes that include, but are not limited to, the following: aesthetics; agricultural use; aquaculture and fish propagation; commercial use; cultural, religious and spiritual uses; domestic use; fire protection; ground water recharge; hydropower generation; industrial use; ecological flow uses; mineral resource development; municipal use; navigation; Pollution control; recreational use; resource development; stock water use; storage, transfer, and marketing; water quality; and wildlife Habitat.
- (h) **“Best Management Practices (BMPs)”** means the state of the art, recommended physical, structural, and/or managerial actions that, when used singly or in combination, prevent or reduce Degradation or Contamination of the environment.
- (i) **“Buffer”** means the area around a stream or wetland that is required to protect and maintain the functions and stability of the stream and/or wetland, generally between twenty-five (25) and one-hundred (100) feet wide.
- (j) **“Contaminant”** means any chemical, physical, biological, thermal, or radiological substance or matter that has an adverse effect on air, water, or soil.
- (k) **“Contamination”** means the presence of any harmful or deleterious substance that may pose a threat to the quality, purity, or safety of a water supply.

- (l) **“Contiguous Wetlands”** means wetlands that are connected to waters of the Rincon Reservation or other geographic features (e.g., open space) by any of the following criteria:
- (1) All or part of the wetland lies within the 100-year floodplain of waters of the Rincon Reservation;
 - (2) Hydric soil and Hydrophytic vegetation extend continuously to waters of the Rincon Reservation or other pertinent geographic features; or
 - (3) Sufficient evidence exists to conclude the wetland is hydrologically connected and is immediately adjacent to waters of the Rincon Reservation or other pertinent geographic features.
- (m) **“Cultural instream uses”** means use of water in a stream to fulfill cultural, traditional, spiritual, or religious needs of the Rincon Band, as approved by the Tribal Council.
- (n) **“Cumulative impact”** means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or Person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
- (o) **“Degradation”** means the lowering of, or threat of lowering, water quality or the quality of the natural environment by an increase in Contaminants or Pollution or by a decrease in the ecological quality of the environment (e.g. vegetative community changes via harvest activity or invasion of non-native plants).
- (p) **“Delineation”** means a formal, on-site process to identify the boundary between a wetland and the surrounding upland or plume and surrounding groundwater. The Delineation may be based on the methodology in the currently and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," as amended from time to time, and any other applicable Tribal Law, including, but not limited to, the Rincon Hazardous Material Control Ordinance, RTC § 8.600, as the same may be amended from time to time.
- (q) **“Discharge”** means the volume of water that passes a point per a given unit of time and is commonly expressed in units of cubic feet per second, cubic meters per second, gallons per minute, gallons per day, or millions of gallons per day.
- (r) **“Drainage”** means the collection, conveyance, containment, and/or discharge of surface or ground water, including storm water runoff.
- (s) **“Drainage facility”** means a system of collecting, conveying, containing, storing, and/or discharging surface water, ground water, or storm water runoff, including, but not limited to, all conveyance and containment facilities such as streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities,

erosion/sedimentation control facilities, and other similar structures and appurtenances, both natural and man-made.

- (t) **“Draining”** means artificially changing ground or surface water wetland hydrology by constructing or enhancing drainage (i.e., making the site/area less wet), including widening streams, constructing or widening ditches, or installing drains (e.g., tiles).
- (u) **“Ecological flow regime”** means the combination of instream flow levels needed over various time periods to preserve, protect, and restore the physical, biological, and chemical aspects of water. The ecological flow regime can be divided into five functional categories as applicable: 1) Water Quality Maintenance, 2) Fisheries Baseflow, 3) Channel Maintenance, 4) Riparian Maintenance, and 5) Valley Maintenance.
 - (1) The Water Quality Maintenance flow is the quantity of water needed to assimilate wastewater and still achieve compliance with applicable water quality standards.
 - (2) The Fisheries Baseflow is the minimum instream flow needed to support fish populations during different life stages.
 - (3) The Channel Maintenance flow is the minimum amount of water needed to perform processes such as sediment transport. Channel Maintenance flows impact the long-term characteristics of aquatic Habitat such as the quantity and quality of pools and riffles.
 - (4) Riparian Maintenance flows are the flows needed to maintain a productive plant and animal community along the stream corridor.
 - (5) Valley Maintenance flows are catastrophic flood events and are generally not quantified.
- (v) **“Emergency”** means an occurrence or condition calling for immediate action to avert imminent danger or harm to life, health, property, or environment.
- (w) **“Enhancement”** means actions performed to improve the condition of existing degraded or naturally impaired streams, wetlands, or Buffers so that they provide more functions and/or functions of higher quality.
- (x) **“Filling”** means the depositing of any material on a site that raises the surface level of the land or the bed of a body of water above its prior or natural elevation.
- (y) **“Functions”** means the roles that a natural area performs within the ecosystem. Stream, wetland, and/or Buffer functions are attributes that contribute to the ecological, hydrological, social, cultural, and/or economic systems that surround and include the natural area. Stream, wetland, and/or Buffer functions include, but are not limited to, the following features:
 - (1) Erosion control, soil conservation, and shoreline stabilization, especially along shorelines and streambanks where wetland vegetation reduces water velocity;

- (2) Surface and ground water storage and recharge, storm-water management, flood storage, and stream base-flow contribution;
 - (3) Water-quality improvement via filtration and settling of sediment, turbidity reduction, re-oxygenation, chemical and biological nutrient-cycling, Contaminant reduction, and moderation of water temperature;
 - (4) Micro-climatic influence on temperature and moisture;
 - (5) Flora and fauna Habitat for numerous species, including plants of cultural importance, fish, frogs and other amphibians, songbirds, waterfowl, raptors, and various mammals, many of which are directly dependent on wetlands and streams for survival during at least part of their life cycle;
 - (6) Tribal cultural uses;
 - (7) Recreational opportunities, such as swimming, boating, fishing, nature-watching, walking along interpretive trails, and enjoying view overlooks; and
 - (8) Open space, backdrops, and natural borders, which help separate various land uses and provide Buffers from incompatible uses. Open space relieves overcrowding and often is aesthetically pleasing.
- (z) **“Ground water”** means all water that exists beneath the earth surface or beneath any surface water body, regardless of the geological formation or structure in which such water stands, flows, percolates, or otherwise moves.
- (aa) **“Ground water recharge area”** means the land surface area where precipitation infiltrates through surface soil materials and into the ground. Recharge may also occur from surface waters, including lakes, streams, and wetlands. Ground water recharge areas are called “aquifer recharge areas” when the ground water contributes to an Aquifer.
- (bb) **“Habitat”** means the specific area or environment in which specified plants or animals live.
- (cc) **“Hazardous Material”** means:
- (1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:
 - (A) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
 - (B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.
 - (2) Any "hazardous waste," defined as any waste which:
 - (A) Will persist in a hazardous form for three (3) years or more at a disposal site; and
 - (B) While in its persistent form:

- (i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or
- (ii) Is toxic to people or wildlife; or
- (iii) Adversely affects living organisms in soil, sediment, and water, or air; or

(C) If disposed of at a disposal site in such quantities or concentrations as might present a hazard to people or the environment.

(3) Any substance included as a “listed waste” under 40 CFR §261.30 through 261.33.

(4) Any substance classified as a “characteristic waste” defined in the 40 CFR §261.20 through §261.24 as exhibiting one of four hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(5) Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(6) Any substance that is a hazardous substance pursuant to 42 U.S.C. § 9601(14).

(7) Petroleum or petroleum products.

(D) The term Hazardous Material does not include crude oil or any fraction thereof or petroleum when contained in an underground or aboveground storage tank from which there is not a release, if the tank is in compliance with all applicable federal and Tribal laws.

(8) Any substance or category of substances, including solid waste decomposition products, determined by the RED to present a threat to human health or the environment if released into the environment.

(dd) “Hydraulic head” means the height of water above any plane of reference; “Hydraulic head” also means the energy, either kinetic or potential, possessed by each unit weight of a liquid, expressed as the vertical height through which a unit weight would have to fall to release the average energy possessed.

(ee) “Hydric soil” means a soil that, if in an undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop anaerobic (oxygen-lacking) conditions that favor the growth and regeneration of wetland (Hydrophytic) vegetation. Identification of hydric soils shall be based on the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(ff) “Hydrologist” means a Person professionally qualified by education and experience in the science of hydrology, or the science of water that is concerned with the organ, circulation, distribution, and properties of waters of the earth.

(gg) “Hydroperiod” means the seasonal timing, frequency, and duration of the water level in a

wetland.

(hh) “Hydrophytic vegetation” means plants that are adapted to growth in water or in a substrate that is at least periodically lacking in oxygen as a result of excessive water content. Identification of Hydrophytic vegetation shall be based on the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(ii) “Illicit discharges” mean any non-storm water discharges to storm water drainage systems that could cause or contribute to a Degradation of water quality, sediment quality, or ground water quality, including, but not limited to, sanitary sewer connections, industrial process water, interior floor drains, car washing, and iron grate systems.

(jj) “Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil compared to conditions before development, and/or a hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow relative to conditions before development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered impervious surfaces.

(kk) “Individual on-site waste treatment sewage disposal system” means an on-site system for sewage disposal from an individual structure including residential home, school, library, tribal administration building, other administrative building or similar type structure or building that does not include any waste from any industrial process.

(ll) “Industrial process” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of “Division D—Manufacturing” and such other classes of significant Hazardous Material or waste producers as the Tribal Council or RED designates.

(mm) “Isolated Wetlands” means non-tidal wetlands not part of a surface tributary system to intrastate or navigable waters of the United States and are no adjacent to such tributary waterbodies.

(nn) “Land-disturbing activity” means any activity resulting in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling, and excavation.

(oo) “Manager” means the Manager of the Rincon Environmental Department (RED).

(pp) “Mitigation” means, in the following order of preference:

- (1)** avoiding adverse impacts on the environment and Rincon Reservation Water altogether by not acting or failing to act;
- (2)** minimizing adverse impacts on the environment and Rincon Reservation Water by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce adverse impacts;
- (3)** rectifying the adverse impacts on the environment or Rincon Reservation Water by repairing, rehabilitating, or restoring the affected environment or water resource;
- (4)** reducing or eliminating the adverse impacts on the environment or Rincon Reservation Water over time by Preservation and maintenance

operations during the action; and

(5) compensating for the adverse impacts on the environment and Rincon Reservation Water by replacing, enhancing, or providing substitute water resources or environments.

(qq) **“Mitigation bank”** means a system or arrangement in which a property or properties are protected in perpetuity and approved by appropriate tribal and federal agencies expressly for the purpose of providing compensatory Mitigation in advance of authorized impacts to other areas through restoration, creation, and/or enhancement of wetlands and, in exceptional circumstances, through Preservation of wetlands, wetland Buffers, and/or other aquatic resources.

(rr) **“Native vegetation”** means plant species, other than noxious weeds, that are indigenous to similar environments within Southern California (i.e., plants that occur (or occurred) naturally in the area and that reasonably could have been expected to naturally occur on the site).

(ss) **“New development”** means the following activities: land-disturbing activities, structural development (including construction, installation, or expansion of a building or other structure), creation of impervious surfaces, general forest practices that are conversions from timber land to other uses, and subdivision and short subdivision of land. All other forest practices and commercial agriculture are not considered new development.

(tt) **“Nonpoint-source pollution”** means pollution that, in response to precipitation, enters the surface water, ground water, or other elements of the natural environment from diffuse (e.g. automobiles, pesticides, applications, construction sites, animal waste, and Habitat alteration) sources and not from a specific point source.

(uu) **“Ongoing agricultural activity”** means agricultural activities (including grazing, tilling, planting, and other activities) that are ongoing as long as the area on which they are conducted has not been converted to another use or has lain idle so long that modifications to the hydrology are necessary to resume operation. Any lands that have been idle for five years or longer will no longer be considered as lands with "ongoing" agricultural activities. This definition should be interpreted in line with that of the U.S. Department of Agriculture and shall not be interpreted in any way to regulate any adjudicated water right or interest of an allottee, or allotment in trust status, on the Rincon Reservation.

(vv) **“Ordinance”** means this Rincon Water Resources Protection Ordinance, as amended from time to time.

(ww) **“Ordinary high water mark”** means the mark on the shores of all surface waters that is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation (i.e., the vegetation line), provided that, in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the elevation of the vegetation line determined from a sample of nearby sites where the vegetation line can be ascertained.

(xx) **“Person”** means any Person or entity, natural or artificial, including, but not limited to, any tribal member, assignee, individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America and all agencies thereof, the State of California and all political subdivisions, municipal corporations, organizations, and public agencies thereof, and the Rincon Band and all political subdivisions, organizations, and public agencies thereof.

(yy) **“Point-source pollution”** means pollution that enters the surface water, ground water, or

other elements of the natural environment from a stationary location or single identifiable source (e.g., the end of a pipe).

(zz) "Pollution" means the presence of matter, energy, Contamination, or other alteration of the physical, chemical, or biological properties of water or land whose nature, location, or quantity produces undesired environmental effects, including, but not limited to, changes in aesthetics, temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or threatens to render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to cultural, spiritual, domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wildlife, birds, fish, or other aquatic life.

(aaa) "Precipitation" means water that falls from the atmosphere and reaches the earth in the form of fog, drizzle, rain, sleet, snow, or hail.

(bbb) "Preservation" means to provide legal protection to natural areas that would otherwise be lost to lawful activities.

(ccc) "Public water-supply well" means a well that supplies two or more separate residential connections.

(ddd) "Reconnaissance" means an examination of a project area by qualified Band staff and/or by a qualified wetland specialist to determine the presence, approximate boundaries, and probable functions of wetlands and/or streams. A reconnaissance is not a legal wetland Delineation, but may be substituted for a Delineation at the discretion of the Rincon Band for the purposes of this Ordinance.

(eee) "Re-development" means the following activities: substantial additional development on an already developed site; the creation or addition of impervious surfaces; additional structural development, including construction, installation, or expansion of a building or other structure; replacement of impervious surface that is not part of routine maintenance activity; and land-disturbing activities associated with structural or impervious redevelopment.

(fff) "Regulations" shall mean the regulations adopted pursuant to the requirements of this Ordinance.

(ggg) "Reservation" means all lands within the boundaries of the Rincon Reservation, including, but not limited to:

(1) all lands within the territorial boundaries of the Rincon Indian Reservation as established by the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, and any fee land acquired in trust pursuant to 25 U.S.C. 461 and its implementing regulations, and such other lands as may thereafter be added thereto or made a part thereof; and

(2) all other trust, restricted, or tribally owned lands, regardless of whether they have been formally added to or made part of the Rincon Reservation.

(hhh) "Restoration" means actions performed to reestablish a stream, wetland, or Buffer and its functions within an area that no longer meets the definition of a stream, wetland, or Buffer because of alterations, activities, or catastrophic events, and actions performed to return an existing stream, wetland, or Buffer to a state in which its functions and values approach the state

that existed before disturbance or Degradation.

(iii) "Rincon Band" means the Rincon Band of Luiseño Indians, a sovereign Indian Band which is recognized as such by the federal government of the United States of America. Reference to "Tribe" or "Band" in this Ordinance, or any existing or future ordinance shall mean the "Rincon Band".

(jjj) "Rincon Reservation Water" means all fresh waters that originate or flow in, into, or through the Rincon Reservation, or that are stored on the Rincon Reservation, whether found on the surface of the earth or underground, and all Rincon Band tribal reserved water rights.

(kkk) "Rincon Environmental Department" or "RED", is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances and management of the Rincon Band's natural resources unless otherwise specified.

(lll) "Runoff" means water originating from precipitation or ground water that is found in overland flow or in features, including, but not limited to, drainage facilities, rivers, streams, springs, seeps, ponds, lakes, and wetlands. "Source-control BMP" means a Best Management Practice (BMP) that is intended to prevent pollutants from entering storm water. A few examples of source control BMPs are erosion control practices, maintenance of storm water facilities, constructing roads over storage and working areas, and directing wash water and similar discharges to a sanitary sewer or an appropriately designed dead-end sump.

(mmm) "Storm water" means that portion of precipitation that does not percolate into the ground or evaporate, but moves via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed drainage facility.

(nnn) "Stream" means those areas where surface water flows sufficiently to produce a defined channel or bed, indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water, provided that a channel or bed need not contain water year-round; provided further that "stream" does not include irrigation ditches, canals, storm water runoff facilities, or other entirely artificial watercourses unless they are used to convey streams naturally occurring before construction.

(ooo) "Stream bank" means that portion of the land surface extending from the stream water surface to the ordinary high water mark recognized by the Rincon Environmental Department and thence to fifty (50) feet upland of the ordinary high water mark.

(ppp) "Surface water" means any or all water originating from precipitation or ground water Discharge that is found at the surface of the earth, primarily in rivers, streams, springs, seeps, ponds, wetlands, lakes, and storm water drainage facilities.

(qqq) "Treatment BMP" means a Best Management Practice (BMP) that is intended to remove pollutants from storm water. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales, and constructed wetlands.

(rrr) "Tribal Council" is the five-member Business Committee established under Section 3 (a) of the Articles of Association. "Tribal Council" shall be synonymous with "Business Committee" or "Rincon Business Committee" as used in this Ordinance or any existing or future Tribal ordinance.

(sss) "Tribal Court" means the Intertribal Court of Southern California or other tribal forum designated by the Tribal Council to hear and decide violations of Tribal environmental ordinances.

(ttt) "Tribal reserved water rights" means those rights to use, divert, or affect Rincon Reservation Water reserved by or for the Rincon Band under federal law, including, but not limited to, treaty, executive order, aboriginal doctrine, or case law, and any and all other water rights derived from the foregoing.

(uuu) "Values" means the intangible benefits a natural area provides to the society/culture;

some of these benefits overlap with or are included in those listed above in the definition of functions.

(vvv) **“Water”** means Rincon Band ground water and surface water.

(www) **“Water body”** means surface waters, including, but not limited to, rivers, streams, lakes, wetlands, and reservoirs.

(xxx) **“Water quality”** means the chemical, physical, and biological characteristics of water, usually in respect to its suitability for a particular purpose or other designated beneficial use.

(yyy) **“Water quality standards”** means numeric standards adopted by the Rincon Band for Rincon Reservation Water that prescribe the use of a water body and establish the water quality criteria that must be met to protect designated uses.

(zzz) **“Watershed”** means a topographically delineated area that is drained by a stream system, that is, total land area above some point on a stream or river that drains past that point.

(aaaa) **“Wetland classification”** means descriptive categories of the taxonomic classification system for wetlands developed by the U.S. Fish and Wildlife Service in the document classification of wetlands and deepwater Habitats of the United States.

(bbbb) **“Wetland complex”** means areas where wetlands and uplands form a highly interspersed mosaic, often with a number of small, hydrologically interconnected (either through ground water or surface water) wetlands as commonly found in hummock and swale topography.

(cccc) **“Wetland creation”** means a human activity to bring a wetland or portion of a wetland into existence where one previously did not exist (e.g., in an upland or shallow aquatic environment).

(dddd) **“Wetland edge”** means the boundary of a wetland as identified using the methodology in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(eeee) **“Wetland hydrology”** means to have the substrate saturated to the surface or inundated at some point in time during an average rainfall year, sufficient to meet the criteria in the current and federally accepted edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(ffff) **“Wetlands”** means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(gggg) **“Wet Weather Criteria”** means the criteria by which the RED shall determine wet weather testing periods.

(1) The RED shall determine wet weather testing periods on a geographic base. The following criteria shall be followed:

(A) Between January 1 and April 30; and

(B) Following 10 inches of rain in a 30-day period or after one-half of the seasonal normal precipitation has fallen. Extension of wet weather testing beyond the limits of above criteria may be made in accordance with a program of groundwater level monitoring approved by the Tribal Council and conducted by the RED.

§ 8.904 APPLICABILITY

(a) Except as provided in subsection (b) below, this Ordinance applies to all Persons using or desiring to use Rincon Reservation Water or undertaking activities or

desiring to undertake activities that affect Rincon Reservation Water, including, but not limited to, surface and ground waters in, on, or underlying all lands within the boundaries of the Rincon Reservation.

(b) Nothing in this Ordinance shall be construed as restricting the rights of Indians residing on the Rincon Reservation to the just and equal distribution of water for use for agricultural purposes or to conflict with the reserved water rights held by the owners of allotments within the Rincon Reservation.

(c) No Person may make private agreements regarding uses of Rincon Reservation Water that are inconsistent with the provisions of this Ordinance.

(d) Applicability of Ordinance to non-Indian activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation is as follows:

(1) In *Montana v. United States*, the Supreme Court held that tribes generally do not have jurisdiction over non-Indian activities occurring on Rincon Reservation fee lands, subject to two important exceptions:

(A) A tribe may regulate the activities of non-members who enter consensual relationships with the Rincon Band or its members, through commercial dealings, contracts, leases, or other arrangements; and

(B) A tribe may also retain inherent power to exercise civil authority over conduct that threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Rincon Band.

(2) Prior to applying Ordinance to non-Indian activities occurring on fee lands located within the Rincon Reservation, the Rincon Environmental Department must first determine that the non-Indian activities seeking to be regulated fall within one of the exceptions set forth in Section 8.904(d)(1).

(A) The Rincon Environmental Department shall include a written determination under Section 8.904(d)(1) within any Notice of Violation in which non-Indian activities occurring on fee lands located within the Rincon Reservation are the basis for the violation.

(B) The recipient of any such Notice of Violation shall be entitled to a preliminary jurisdictional hearing before the Tribal Court.

(C) If the recipient objects to tribal jurisdiction and requests a jurisdictional hearing, the burden shall be on the Rincon Band to establish tribal jurisdiction pursuant to federal common law.

WELLHEAD PROTECTION

§ 8.905 FINDINGS AND PURPOSE

(a) Contamination of wellhead areas and ground water resources of the Rincon

Reservation has a direct, serious, and substantial detrimental effect on the cultural, political, and economic integrity of the Rincon Band and on the health and welfare of its members and all Persons present on the Rincon Reservation.

(b) The Rincon Reservation ground water resources are vulnerable to Contamination, which could lead to the loss of the primary water supply source of the Rincon Band.

(c) Alternate water sources to serve the needs of the Rincon Reservation are expensive and may not be available in amounts sufficient to replace existing supplies and to provide for future anticipated tribal economic and residential growth. Moreover, alternative water sources would require substantial amounts of capital expenditure for the infrastructure upgrades that would be necessary to import larger volumes of water onto the Rincon Reservation. Finally, alternative water sources may be subject to service interruptions over the long term due to natural or human generated disasters.

(d) This Ordinance provides guidelines to determine appropriate conditions to be included in permits issued by the RED for the protection of wellhead areas and ground water resources of the Rincon Band.

§ 8.906 ESTABLISHMENT OF WELLHEAD PROTECTION AREAS

(a) A Wellhead Protection Area is a geographic area delineated around wells and/or wellfields within which land uses are regulated to protect the quality and quantity of the ground water resource. A Wellhead Protection Area is an overlay of a zoning area that imposes additional requirements and restrictions to those of the underlying zoning area. In all cases, the most restrictive requirements apply.

(b) A wellhead is a physical structure, facility, or device at the land surface from or through which ground water flows or is pumped from water-bearing formations. A wellhead can be a developed spring or groundwater well that was hand dug or constructed by a machine.

(c) Wellhead protection areas are to be calculated using the Calculated Fixed Radius Method (or more sophisticated method approved by RED) as described below and are centered on the wellhead.

(1) The equation for the calculated fixed radius is:

(A) $Rt \square \sqrt{\frac{Qt}{\pi\eta H}}$ OR $Rt \square \sqrt{\frac{Q \times t}{\pi \times \eta \times H}}$ Equation 8.906-1

Where:

R_t = radius of zone (feet) for time period t

Q = pumping capacity of well in cubic feet per year (ft^3/year), where ft^3/year = gallons per minute (gpm) $\times 70,267$

t = travel time (years) (2, 5, or 10 years, as discussed below)

$\pi = 3.1416$

η = effective porosity (decimal percent) H = screened interval of well (feet)

The pumping capacity to be used is the maximum rate the well can be pumped, in gallons per minute converted to the equivalent in cubic feet per year. Pumping capacity of the well should be known by the water purveyor. If the capacity is unknown, the purveyor may conduct a pumping test to determine the appropriate value. If that is not possible, an estimate can be made if justification is provided. If there are no references to use to estimate the pumping rate, the RED should be consulted for assistance in determining the appropriate value to use in the Delineation.

(2) For wells that are used intermittently, using the maximum pumping rate of the well may result in extremely large zones which do not correspond to the actual production of the well, particularly at the 5 and 10-year travel times. In this case, with the concurrence of the RED, a water supplier may use the total annual production of the well (in ft^3/year) in the highest of the previous three to five years. Water suppliers are encouraged to consider future production levels if significant growth is expected to occur in the service area.

(3) Travel time is used to provide different protection areas for different types of threats to a well. The three travel times are discussed below:

(A) **Area R_2 .** The purpose of the R_2 area is to protect the drinking water supply from viral, microbial, and direct chemical Contamination. The area is defined by the surface area overlying the portion of the Aquifer that contributes water to the well within a **two-year time-of-travel**. Existing research indicates that bacteria and viruses survive less than two years in soil and ground water. This area provides only a limited time for responding to serious microbiological Contamination or chemical spills.

(B) The purpose of the R_5 and R_{10} areas is to prevent chemical Contamination of the water supply, and to protect the drinking water source for the long term. These zones are used to focus attention on possible chemical Contamination that may exist near the well but at a greater distance than the R_2 area.

(C) **Area R_5** encompasses the area between the two- and **five-year time-of-travel**. This area provides for more response time for chemical spills than the R_2 area.

(D) **Area R_{10}** encompasses the area between the five- and **ten-year time-of-travel**. The primary purpose of this area is to encourage decision-makers and planners to recognize long-term aspects of the drinking water source. The ten-year time-of-travel allows for some attenuation or remediation of Contaminant sites, or if necessary, time to develop alternate sources of water supply.

(E) The minimum allowable radius is 1,000 feet for area R_5 and 1,500 feet for area R_{10} , for porous media Aquifers, and 1,500 and 2,250 feet, respectively, for fractured rock Aquifers.

(4) The length of screened interval to be used in the equation should be based on well construction information. If the actual value is unknown, an initial conservative estimate can be made equal to 10% of the pumping capacity of the well in gallons per minute (gpm), with a minimum of 10 feet. For example, the estimated screened interval for a well that pumps at 400 gpm is 40 feet.

(5) Effective porosity should be estimated using available information for the Aquifer. However, if a value is not known, a value of 0.2 can be used for an initial calculation. The estimated value of 0.2 for effective porosity is reasonably conservative for most Aquifers in California based on available information.

(d) Operations and activities that are prohibited within the R_2 , R_5 , and R_{10} Areas are described using the North American Industry Classification System, and are listed in Resolution No. 2013-28. Where existing land use conflicts with the prohibited operations and activities within zones R_2 , R_5 , and R_{10} , Property Owner and Tenant must have adequate protective and warning measures in-place and prove to the satisfaction of the RED that said measures are adequate to protect groundwater resources.

(e) Wellhead protection areas consist of Aquifers and/or groundwater recharge zones with minimum radii of 600 feet for R_2 areas, 1,000 feet for R_5 areas, and 1,500 feet for R_{10} areas.

(f) If the location of the wellhead protection area in relation to a suspected prohibited use is in doubt, resolution of boundary disputes shall be through the Rincon Tribal Council. Disputants shall be afforded notice and an opportunity to be heard after prima facie showing by the Rincon Band as to the prohibited activities occurring in the wellhead protection zone, the burden of proof shall be upon the owner(s) of the land in question to show where the boundary should properly be located.

(g) The Rincon Band may engage a professional engineer (civil or sanitary), Hydrologist, geologist, or surveyor to determine more accurately the boundaries of the wellhead protection area with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

§ 8.907...POLICY ON THE CONTROL OF WATER QUALITY WITH RESPECT TO ON-SITE WASTE

(a) Establishment of Sanitary Control Area. A Sanitary Control Area is an area within a Wellhead Protection Area that is required to protect a well or spring from existing and potential Contamination sources.

(1) A Sanitary Control Area shall be maintained around all wells and springs for the purpose of protecting them from existing and potential Contamination sources. The following policy shall be implemented with respect to discharges from individual waste treatment and disposal systems. This policy sets forth uniform Rincon Reservation wide criteria and guidelines to protect water quality and to preclude health hazards and nuisance conditions arising from the subsurface discharges of waste from on-site waste treatment and disposal systems.

(b) Site Evaluation Criteria and Methods

(1) Criteria. The following site criteria are considered necessary for the protection of water quality and the prevention of health hazards and nuisance conditions arising from the on-site discharge of wastes.

(A) Subsurface Disposal. Individual on-site waste treatment sewage disposal systems shall be located, designed, constructed and operated in a manner to ensure that effluent does not surface at any time, and that percolation of effluent shall not adversely affect waters of the Rincon Reservation.

(B) Ground Slope and Stability. Natural ground slope in all areas to be used for effluent disposal shall not be greater than twenty five (25) percent. Natural ground slope criteria for mounds shall be as follows: for percolation rates slower than 60 minutes per inch the maximum allowable slope is six (6) percent and for percolation rates faster than 60 minutes per inch the maximum allowable slope is twelve (12) percent. In addition, steeper ground slopes may be allowed for experimental systems approved by the RED. All soils to be utilized for effluent disposal shall be stable.

(C) Soil Depth. Soil depth is measured vertically to the point where bedrock, hardpan, impermeable soils or saturated soils are encountered. Minimum soil depth below the bottom of the leaching trench shall be determined according to percolation rates as shown in Table 1.

Table 1 – Minimum Depth of Soil below Leaching Trench

Percolation Rate (minutes per inch – MPI)	Depth of Soil Below Leaching Trench (feet)
6 OR LESS	20
6 TO 30	8
Greater than 30	5

(D) Depth to Groundwater. Minimum depth to anticipated highest level of groundwater below the bottom of the leaching trench shall be determined according to percolation rates as shown in Table 2.

Table 2 – Minimum Depth of Groundwater below Leaching Trench

Percolation Rate (minutes per inch – MPI)	Depth to Groundwater Below Leaching Trench (feet)
6 OR LESS	20
6 TO 30	8
Greater than 30	5

(E) Percolation Rates. If percolation test results in the effluent disposal area are slower than 60 minutes per inch (MPI), or faster than 6 MPI, only engineered waste treatment and disposal systems may be used. Engineered waste treatment and disposal systems must be prepared by or under the direct supervision of a California Licensed Civil Engineer or California Certified Engineering Geologist and the RED. Percolation test results shall not be faster than 1 MPI or slower than 120 MPI in the effluent disposal area.

(F) Replacement Area. An adequate replacement area equivalent to and separate from the initial effluent disposal area shall be identified at the time of site approval. Incompatible uses of the replacement area shall be prohibited.

(G) Setbacks: Minimum horizontal setbacks from any waste treatment and disposal system shall be as follows, unless an alternative setback is approved by RED:

- (i)** 5 feet from parcel property lines and structures;
- (ii)** 10 feet from the edge of public road easements;
- (iii)** 25 feet from the edge of public water line easements;
- (iv)** 100 feet from water wells and monitoring wells, unless regulatory or legitimate data requirements necessitate that monitoring wells be located closer;
- (v)** 100 feet from any unstable land mass or any areas subject to earth slides identified by a California Licensed Civil Engineer or California Licensed Geologist; other setback distance may be allowed, if recommended by a geotechnical report prepared by a qualified professional;
- (vi)** 100 feet from springs and flowing surface water bodies where the edge of that water body is the natural or levied bank for creeks and rivers, or may be less where site

conditions prevent migration of wastewater to the water body;

(vii) 200 feet from vernal pools, wetlands, lakes, ponds, or other surface water bodies where the edge of that water body is the high water mark for lakes and reservoirs;

(viii) 150 feet from a public water well where the depth of the effluent dispersal system does not exceed 10 feet;

(ix) Where the effluent dispersal system is within 1,200 feet from a public water systems' surface water intake point, within the catchment of the drainage, and located such that it may impact water quality at the intake point such as upstream of the intake point for flowing water bodies, the dispersal system shall be no less than 400 feet from the high water mark of the reservoir, lake or flowing water body; and,

(x) Where the effluent dispersal system is located more than 1,200 feet but less than 2,500 feet from a public water systems' surface water intake point, within the catchment of the drainage, and located such that it may impact water quality at the intake point such as upstream of the intake point for flowing water bodies, the dispersal system shall be no less than 200 feet from the high water mark of the reservoir, lake or flowing water body.

(2) Methods of Site Evaluation. Site evaluations are required in all instances to allow proper system design and to determine compliance with proceeding site suitability criteria prior to approving the use of on-site waste treatment and disposal systems. The RED will be notified prior to conduct of site evaluations since verification by the RED may be required. Site evaluation methods shall be in accordance with the following guidelines:

(A) General Site Features: Site features to be determined by inspection shall include:

(i) Land area available for primary disposal system and replacement area.

(ii) Ground slope soil type and soil depth in the effluent disposal and replacement area.

(iii) Location of cut banks, natural bluffs sharp changes in slope and unstable land forms within fifty feet of the disposal and replacement area.

(iv) Location of all objects that may impose setback limitations on the waste treatment and disposal system.

(B) Soil Profiles. Soil characteristics shall be evaluated by soil

profile analysis. A minimum of one backhoe excavation in the primary disposal field and one in the replacement area shall be required for this purpose. A third profile shall be required if the initial two profiles show dissimilar conditions. Augered test holes may be an acceptable alternative, upon determination of the RED: (a) where use of a backhoe is impractical because of access, (b) when necessary only to verify conditions expected on the basis of prior soil investigations, or (c) when done in connection with geologic investigations. Where this method is employed, a minimum of three test holes in the primary disposal field and three in the replacement area shall be required. In evaluation of new subdivisions, an adequate number of soil profile excavations shall be made to identify a suitable disposal and replacement area on each proposed parcel. The following factors shall be observed and reported from ground surface to a depth of at least five to twenty feet below the proposed leachfield system (as required by the percolation test results in the effluent disposal area):

- (i) Thickness and coloring of soil layers and apparent United States Department of Agriculture classification.
- (ii) Depth to and type of bedrock, hardpan, or impermeable soil layer.
- (iii) Depth to observed groundwater.
- (iv) Depth to soil mottling.
- (v) Other prominent soil features such as structure, gravel content, roots and porosity, water holding capacity, etc.

(C) Depth to Groundwater Determinations. The anticipated highest level of groundwater shall be estimated:

- (i) As the highest extent of soil mottling observed in the examination of soil profiles; or
- (ii) By direct observation of groundwater levels during wet weather conditions.
- (iii) Where a conflict, in the above methods of examination exists, the direct observation shall govern. In those areas, which, because of parent materials, the soils lack the necessary iron compounds to exhibit mottling, direct observation during wet weather conditions shall be required. Guidance in defining such areas shall be provided by the RED.

(D) Soil Percolation Suitability. A site's suitability for percolation of effluent shall be determined by both of the following methods, unless this requirement is waived by the RED:

(i) Percolation Testing. Percolation testing shall be in accordance with methods specified by the RED. Percolation testing of soils shall be conducted during wet weather, or in non-wet weather conditions provided presoaking of the test hole is accomplished with (a) a continuous 12 hour presoaking, or (b) a minimum of four complete re-fillings beginning during the day prior to the day the test is conducted.

(ii) Soil Analysis. Soil from the limiting soil layer observed within the excavated soil profile shall be obtained and analyzed for composition (particle size and properties analysis) and bulk density according to methods prescribed by the RED.

a. Wet Weather Criteria: The RED shall determine Wet weather testing periods on a geographic base. The following criteria shall be followed:

1. Between January 1 and April 30; and
2. Following 10 inches of rain in a 30-day period or after one-half of the seasonal normal precipitation has fallen. Extension of wet weather testing beyond the limits of above criteria may be made in accordance with a program of groundwater level monitoring conducted by the RED.

(E) The following are the requirements for a Sanitary Control Area.

(i) Size of the area:

a. Unless engineering justification supports a smaller area, the minimum sanitary control area around a public water supply well shall be a radius of 100 feet and the minimum sanitary control area around a spring shall be a radius of 200 feet. Any engineering justification in support of a smaller area must address geological and hydrological data, well construction details, and other relevant factors necessary to ensure adequate sanitary control; The minimum sanitary control area around a single-family, domestic water supply well shall be determined on a case-by-case basis but shall not be less than fifty (50) feet unless engineering justification supports a smaller area; and

b. The RED may require a larger sanitary control area than that specified in subsections (a) and (b) if

geological and hydrological data support such a decision.

(ii) No source of Contamination may be constructed, stored, disposed of, or applied within the sanitary control area without the approval of the RED.

(iii) Water purveyors shall demonstrate that they have the legal right to exercise complete sanitary control of the land within the sanitary control area applicable to their water source.

§ 8.908 PERMIT FOR USE REQUIRED

No Person may engage in any use or activity that is within a Wellhead Protection Area on the Rincon Reservation without obtaining a land use permit from the Rincon Tribal Administration pursuant to applicable Tribal Law.

§ 8.909 PROHIBITED USES AND/OR ACTIVITIES IN WELLHEAD PROTECTION AREAS

The following uses, development, and/or activities are prohibited in a Wellhead Protection Area:

- (a) landfills containing either solid or Hazardous Material;
- (b) salvage yards, junk yards, stockyards, feedlots, or similar sites containing discarded material having the potential to adversely affect ground water; and industrial on-site waste treatment sewage disposal systems or individual onsite waste treatment sewage disposal systems containing industrial waste.

§ 8.910 CONDITIONAL USES OR ACTIVITIES

The following uses or activities may be conditionally allowed in a designated Wellhead Protection Area pursuant to a land use permit issued by Rincon Tribal Administration:

- (a) agriculture;
- (b) horticulture;
- (c) parks, greenways, or recreation areas;
- (d) necessary public utilities or facilities designed so as to prevent Contamination of ground water;
- (e) industrial and commercial land uses not otherwise prohibited by applicable Tribal Law;
- (f) single family residential housing; and
- (g) multiple family residential developments.

§ 8.911 APPROVAL OF PERMITS FOR CONDITIONAL USES OR ACTIVITIES

The Rincon Tribal Administration will grant approval for conditional uses in Wellhead Protection Areas only after the RED has certified that:

- (a) the proposed use complies with all other applicable water quality standards; and
- (b) the applicant has prepared and submitted for approval an acceptable pollution prevention and spill response plan for the facility or activity for the monitoring, prevention, and cleanup of ground water Contamination due to flood, fire, natural catastrophes, equipment failure, and/or human error.
- (c) All permits shall contain a condition that the permittee agrees to be subject to inspection by the RED or other designated agent of the Rincon Band. The purpose of the inspection is to ensure continued compliance with the conditions under which the permit approval was granted.

§ 8.912 REQUIREMENTS FOR WELLS

Any Person proposing a new well or expansion of an existing well must obtain a permit from the RED, pursuant to Section 8.908. The RED must be satisfied that the following requirements are met:

- (a) Every well contractor must be duly licensed and bonded under the laws of the Rincon Band and/or the State of California.
- (b) The permit application must contain, at a minimum, the well owner's name, and contact information; the well driller's contact information, license, insurance, and bonding information; well location; proposed well construction details; land status; proposed use; and approximate start and completion dates.
- (c) Every well driller must submit a complete record on the construction or alteration of the well to the RED within thirty (30) days of completion of the well. Such record will include:
 - (1) well location,
 - (2) method of drilling and stratum information including depth, thickness, and type;
 - (3) water information including initial and static water levels, the tested capacity of the well, and any other water quality information; and,
 - (4) type and length of well casing, screen, filter pack, and sanitary seal.
- (d) The contractor shall meet all requirements for design required by the RED to ensure ground water quantity and quality. In constructing, developing, redeveloping, or conditioning a well, care shall be taken to preserve the natural barriers to ground water movement between Aquifers and to seal Aquifers or strata penetrated during drilling operations which might impair water quality. In addition to any design requirements set by the RED, the following design requirements shall be met:

- (1) For Monitoring Wells:

(A) Monitoring wells shall be located at an adequate distance from known potential pollutants unless regulatory or legitimate data requirements necessitate that monitoring wells be located closer. The minimum horizontal distances from potential pollutants are shown in Table 3.

Table 3 – Minimum Horizontal Distance Between Potential Pollutant and Monitoring Well

Potential Pollutant	Minimum Distance to Monitoring Well (feet)
Any sewer (sanitary, industrial, storm)	50
Septic tank or sewage leaching field	100
Cesspool or seepage pit	150
Animal or fowl enclosure	100

(B) The top of the monitoring well shall be above any known flood elevation, and surface drainage shall be away from the well, when possible.

(C) Drill cutting and wastewater from monitoring well or exploration hole installations shall be disposed of in accordance with RED Guidelines.

(D) The annular space of all monitoring wells shall be sealed to prevent the well from becoming a preferential pathway for surface Contamination. A minimum of two inches is required around the casing and the wall of the borehole. A seal thick enough to prevent surface infiltration is necessary and will be determined by the depth of the borehole.

(i) **Surface Seal:** The sealing material shall consist of neat cement, sand-cement, or bentonite clay. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the transition seal is at a depth greater than 5 feet or extends below the groundwater surface.

(ii) **Transition Seal:** A bentonite-based or fine grain sand shall be used between the filter pack and the surface seal. This transition seal prevents the surface seal material from infiltrating the filter pack. The transition seal is generally less than two feet. Transition seal shall be installed with a tremie pipe.

(iii) **Filter Pack:** The filter pack is placed from the bottom of the borehole up to above the top of screen. Filter pack material shall be installed with a tremie pipe. The filter pack material shall consist of clean, nonreactive, smooth, rounded, spherical, granular material of highly uniform size and composition. The grain-size of the filter

pack shall be sized to properly match the slot size of the well screen.

(E) The top of a monitoring well casing shall be fitted with a cap and "sanitary seal" to prevent surface water and Contaminants from entering the well. A well box or vault shall be installed around the monitoring well casing. The well box or vault shall be set in a concrete pad at least four inches thick and shall slope away from the well to drain. The concrete pad shall be free of cracks and voids.

(F) Following installation, all monitoring wells shall be developed per RED guidelines.

(G) Rehabilitation and Repair of Monitoring Wells: This section refers to the treatment of a well to recover loss in yield caused by intrusion or clogging of the screen, filter packer, and/or water bearing strata adjoining the well. Rehabilitation methods may include mechanical surging, backwashing, surging with air, water jetting, sonic cleaning, chemical treatment or any combination. Any chemicals used to rehabilitate the well are to be approved by the RED prior to use and immediately removed from the well, filter pack, and water bearing strata following completion. All chemicals, water, and other wastes used to rehabilitate the well shall be disposed of in accordance with RED guidelines.

(2) For All Other Well Types:

(A) Water wells shall be located at an adequate distance from known potential pollutants. The minimum horizontal distances from potential pollutants are shown in Table 4. Water wells shall be placed upgradient from potential Pollution sources, when possible.

Table 4 - Minimum Horizontal Distance Between Potential Pollutant and Water Well

Potential Pollutant	Minimum Distance to Water Well (feet)
Any sewer (sanitary, industrial, storm)	50
Septic tank or sewage leaching field	100
Cesspool or seepage pit	150
Animal or fowl enclosure	100
Feedlot	100
Solid waste disposal site	500
Petroleum or chemical storage areas	500

(B) The top of the water well shall be above any known flood elevation, and surface drainage shall be away from the well, when possible.

(C) The annular space of all water wells shall be sealed to prevent the well from becoming a preferential pathway for surface Contamination. A minimum of two inches is required around the casing and the wall of the borehole. A seal thick enough to prevent surface infiltration is necessary and will be determined by the depth of the borehole.

(i) A concrete base or pad shall be constructed at ground surface around the top of the well casing/vault. This concrete base or pad will create a water tight seal with the surface seal. The concrete base or pad must extend at least two feet laterally in all directions from the outside of the well borehole. The base shall be a minimum of four inches thick and slope away from the well.

(ii) The surface seal shall extend at least 50 feet below ground surface for community water supply and industrial wells, and at least 20 feet for all other types of water wells.

a. Shallow Groundwater: Exceptions to the minimum depth can be made for shallow wells with approval from the RED when the water is at a depth of less than 20 feet. No annular seal shall be less than 10 feet below ground surface.

b. Encroachment on Known Potential Pollution Sources: At the approval of the RED, when a water well is located closer to a known potential Pollution source, the surface seal shall extend from ground surface to the first impervious stratum, if possible, at a minimum depth of 50 feet.

c. Adversely situated wells: For wells situated in adverse conditions, approval from the RED may be required for completion details.

d. Converted wells: Wells being converted from one use to another, with no surface seal, shall have surface seals installed to the proper depth.

e. Wells that penetrate zones containing poor-quality water: If Aquifers known or may have poor-quality water are penetrated during drilling, and the possibility exists that the poor-quality water could move through the borehole during drilling and well construction operations and significantly degrade groundwater quality in other units before sealing material can be installed, then precautions shall be taken to seal off the poor-quality water zones during these activities.

(iii) **Surface Seal:** The sealing material shall consist of

neat cement, sand-cement, concrete, or bentonite. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the surface seal is at a depth greater than 5 feet or extends below the groundwater surface.

(iv) Foundation and Transition Seal: A packer or similar retaining device, or a small amount of sealant can be placed at the bottom of the interval to be sealed before final sealing operations begin to form a foundation for the seal.

a. A transition seal, up to five (5) feet in length, consisting of bentonite or fine grain sand shall be used between the filter pack and the surface seal. This transition seal prevents the surface seal material from infiltrating the filter pack. Sometimes an interval of fine grained sand, usually less than two feet, is placed between the filter pack and the transition seal. Transition seal shall be installed with a tremie pipe. Bentonite can be placed in dry form or a slurry for use in transition seals. Once the bentonite is in the borehole, water should be added, at a ratio of 1 gallon of water for every 2 pounds of bentonite, prior to the placement of the surface seal.

(v) Timing and Method of Placement: The annular space shall be sealed as soon as practical following drilling. In no case shall the annular space be left unsealed longer than 14 days following the installation of the casing.

a. Sealing material shall be placed in one continuous operation from the bottom of the borehole to the top. When the seal is greater than 100 feet, the deepest portion may be installed and allowed to set prior to the installation of the remaining seal.

b. Sealing material shall be installed with the use of the tremie pipe, or equivalent, to prevent freefall, bridging, or dilution of the sealing material. Sealing material shall not be installed by freefall unless the interval is less than 30 feet below ground surface and is dry. Tremie pipe shall be used for installation if the surface seal is at a depth greater than 5 feet or extends below the groundwater surface.

(vi) Groundwater Flow: Special care shall be used to restrict the flow of groundwater into the borehole while placing sealing material.

(vii) Verification: The volume of sealing material placed shall be verified to at least equal the volume to be sealed.

(viii) Pressure: Pressure required for placement of sealing material shall be maintained long enough for the cement based material to set.

(D) Any opening at the surface level shall be sealed, to prevent surface infiltration into the groundwater supply.

(E) In community water supply wells, the well and pump shall be located in a locked enclosure to exclude access by unauthorized Persons.

(F) All wells producing water for domestic use shall be disinfected following construction, repair, or when work is done on the pump, before the well is placed in service per RED guidelines.

(G) In areas where a well penetrates more than one Aquifer, and one or more of the Aquifers contain poor-quality water, the strata producing such poor-quality water shall be sealed off to prevent entrance of the water into the well or its migration to other Aquifer(s).

(i) Strata producing the poor-quality water shall be sealed off by placing impervious material opposite the strata and opposite the confining formation(s). The seal shall extend above and below the strata at least 10 feet. In the event of "bottom" waters, the seal shall extend 10 feet in the upward direction. The sealing material shall fill the annular space between the casing and the wall of the borehole in the interval to be sealed. The sealing material shall be placed from the bottom to the top of the interval.

(ii) In some cases, a "sleeve" or "slip joint" in the casing may be required.

(iii) Sealing material shall consist of neat cement, cement grout, or bentonite clay.

(iv) Sealing shall be accomplished by a method approved by the RED.

(H) Rehabilitation, Repair, and Deepening of Wells:

Rehabilitation is the treatment of a well by chemical or mechanical means (or both) to recover lost production caused by incrustation or clogging of the screens or the formation immediately surrounding the well. The following methods are acceptable: introduction of chemicals, surging by use of compressed air, backwashing or surging by starting and stopping the pump, jetting the water, sonic cleaning, vibratory explosives, or any combinations of these. In the cases where chemicals or explosives are used, prior approval from the RED is required and the well shall be pumped until all traces of them have been removed.

(i) In the repair of wells, materials used for casing shall

be approved by the RED.

(ii) When wells are to be deepened, the standards for well installation are to be followed.

§ 8.913 ABANDONED WELLS

(a) An abandoned well is a well that:

- (1) is other than a monitoring well, has been out of service continuously for one (1) year or more;
- (2) is a monitoring well from which no measurement or sample has been taken for a period of three (3) years;
- (3) is in such a state of disrepair that it cannot be made operational for its intended purpose;
- (4) is a test hole or exploratory boring twenty-four (24) hours after construction and testing work has been completed;
- (5) is a cathodic protection well that is no longer functional for its original purpose; or
- (6) is any boring that cannot be satisfactorily completed as a well.

(b) Any landowner who has drilled a well that has been closed or is abandoned must ensure proper closure to prevent Contamination of the Wellhead Protection Area. The following information must be submitted to the RED for all well closures:

- (1) proof of a plan identifying that the well was or will be sealed using appropriate methods within thirty (30) days of abandonment; and
- (2) a map identifying the location of the closed or abandoned well.

(c) Any Person proposing to abandon a well must obtain a permit from the RED, pursuant to Section 8.908. The RED must be satisfied that the following requirements are met:

- (1) Every well contractor must be duly licensed and bonded under the laws of the Rincon Band and/or the State of California.
- (2) The permit application must contain, at a minimum, the well owner's name and contact information; the well driller's contact information, license, insurance, and bonding information; well location; proposed well destruction procedure; and approximate start and completion dates.
- (3) Every well driller must submit a complete record on the destruction of the well to the RED within thirty (30) days of abandonment of the well. Such record will include: i) well location, ii) method of abandonment, and iii) date of abandonment.

(d) The contractor shall meet all abandonment requirements required by the RED to ensure ground water quantity and quality. In abandoning a well, care shall be taken to preserve the natural barriers to ground water movement between Aquifers and to seal Aquifers

or strata penetrated during drilling operations which might impair water quality. In addition to any abandonment requirements set by the RED, the following abandonment requirements shall be met:

(1) For monitoring and water wells:

(A) If a well is located in an area of known potential Pollution or if the well was not constructed using the current guidelines, then the well shall be destroyed by removing all material within the original borehole (this includes well casing, filter pack, and annular seal). Once all material is out, the hole is to be filled with an appropriate sealing material, using a tremie pipe.

(B) In all cases the well shall be i) sealed with impervious material (neat cement, sand-cement, concrete, or bentonite) from its total depth to within 5 feet of ground surface using a tremie pipe or ii) by a method approved by the RED.

(C) Well Penetrating Multiple Aquifers: The well shall be filled and sealed to prevent interchange. To prevent the vertical movement of water from the producing formation, impervious material must be placed opposite confining formations above and below the producing formations for a distance of at least 10 feet. The formation producing the deleterious water shall be sealed by placing impervious material opposite the formation, and opposite the confining formations for at least 10 feet in both directions, or in the case of "bottom" waters, in the upward direction.

(D) Well Penetrating Fractured Rock: If fractured rock formations are encountered just below the surface, the portions of the well opposite this formation shall be sealed with neat cement, sand-cement grout, or concrete. If these formations extend a considerable depth, alternate layers of coarse stone and cement grout or concrete may be used to fill the well.

(E) When well casing is not removed during abandonment, the top five feet must be removed. In urban areas, the sealing material shall end at a depth of 5 feet below ground surface, and a material, matching its surroundings, will be used to ground surface.

(F) Destruction Requirements for Exploration Borings: Exploration boring shall be completely filled with appropriate sealing material from the bottom to top, using a tremie pipe. In urban areas, the sealing material shall end at a depth of 5 feet below ground surface, and a material, matching its surroundings, will be used to ground surface. If not previously stated, the sealing material shall consist of neat cement, sand-cement, concrete, or bentonite. Potable water shall be used in sealing mixtures. Tremie pipe shall be used for installation if the transition seal is at a depth greater than 5 feet or extends below the groundwater surface.

(e) Abandoned wells that have not been properly closed may be closed and sealed

by the RED, with the cost of such closure or sealing to be paid by the property owner.

§ 8.914 EXISTING NONCONFORMING USES

Any use that is lawfully existing on the effective date of this Ordinance and that does not conform with all the provisions of this Ordinance may remain in use under the following conditions:

- (a) no prohibited use in a Wellhead Protection Area may be expanded if it increases the non-conformity of the activity; and
- (b) abandonment of a use or a permit will result in the loss of the non-conforming use status.
- (c) Notwithstanding subsections (a) and (b) of this section, where the non-conforming use is deemed a substantial threat to public health or the physical environment, the RED may require an appropriate modification to the activity or use to conform to the requirements for wellhead protection.

STREAM AND WETLAND MANAGEMENT

§ 8.915 FINDINGS AND PURPOSE

(a) Streams and wetlands provide a number of benefits to the Rincon Band, including Habitat for migratory birds, amphibians such as frogs and salamanders, and other wildlife; cultural plants and other cultural practices and properties; providing recharge water to ground-water Aquifers; improving water quality; providing water to streams during summer low flows; holding flood and storm waters; and recreational and educational opportunities.

(b) It is the intent of the Rincon Band to achieve no net loss of streams, wetlands, and their functions and, in the long term, to achieve a net gain of stream and wetland functions within the boundary of the Rincon Reservation. These goals will be achieved by measures such as requiring site planning to avoid or minimize damage to streams and wetlands wherever possible and by requiring restoration or enhancement of degraded streams and wetlands to offset losses that are unavoidable. It is also the intent of the Rincon Band to pursue a policy of actively encouraging the restoration or enhancement of streams and wetlands with a high potential to provide wildlife, cultural, water-quality, or Aquifer-recharge functions.

(c) The purposes of Rincon Band Stream and Wetland Management are:

- (1) To protect the functions and values of Rincon Reservation streams and wetlands from the impacts of development activities and other land uses;
- (2) To encourage appropriate residential development and land-use practices by and for tribal members and non-tribal members as well as commercial and business growth on the Rincon Reservation for tribal employment opportunities by providing defined stream and wetland management standards, requirements, and Mitigation alternatives for effective project planning;
- (3) To protect and enhance wildlife resources, cultural resources, and the quantity and quality of Rincon Reservation ground water; and
- (4) To protect surface-water quality and enhance storm-water

management.

**§ 8.916 TRIBAL JURISDICTION OVER STREAMS AND WETLANDS ON
THE RINCON RESERVATION**

The Rincon Band, a federally recognized Indian Tribe, hereby enacts these provisions for protection of Rincon Reservation Water pursuant to 33 USC §1377 of the Clean Water Act, “Indian tribes shall be treated as States for purposes of section 1251 (g) of this title.” Pursuant to 33 USC §1377(h)(1) “Federal Indian reservation” means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and 33 USC §1377(h)(2) “Indian tribe” means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

The criteria in this Ordinance are consistent with § 101(a)(2) of the Clean Water Act (33 U.S.C. § 1251(a)(2)), which declares that “it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shell fish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.” This Ordinance is adopted to protect all authorized uses of Rincon Reservation Waters. Contamination that may result from such uses shall not lower the quality of the water below what is required for public health, domestic water uses, recreation and other uses designated by the Rincon Band.

§ 8.917 [RESERVED]

WATER QUALITY STANDARDS

§ 8.918 FINDINGS AND PURPOSE

(a) All water that flows through or falls onto the Rincon Reservation is precious and contributes to Aquifer recharge on the Rincon Reservation. The waters of the Rincon Reservation support a diverse assemblage of flora, fauna, and Habitats. The quality of these water resources affects the political integrity, economic security, health, and welfare of the Rincon Band as well as subsistence, cultural, commercial, and other uses by tribal and non-tribal members.

(b) Over 100% of the residential water supply for the Rincon Reservation is currently pumped from ground water wells on the Rincon Reservation. Recharge of the Aquifers is primarily from local precipitation (i.e., that which falls on or near the Rincon Reservation). Where surface waters contribute to Aquifer recharge, ground water is susceptible to Contamination.

(c) Activities occurring on all lands within the Rincon Reservation have the potential to impair the quality of Rincon Reservation Waters; impairment of the quality of waters of the Rincon Reservation threatens the economic security, health, and welfare of the Rincon Band.

(d) The purpose of the water quality standards program is to protect Rincon Reservation waters from Contaminants which may (1) have an adverse effect on the health of all Persons present on the Rincon Reservation and/or (2) degrade the integrity of the Rincon Reservation Waters.

(e) The Rincon Band, acting through the RED, pursuant to the Quality Assurance Project Plan for Groundwater and Surface Water Sampling, dated September 23, 2009, has been developed for the monitoring of surface and groundwater sources within the Rincon Reservation.

(f) The purposes of this Ordinance are to establish water quality standards for Rincon Reservation Waters consistent with all beneficial uses, including public health and public enjoyment; the propagation, protection, and restoration of wildlife Habitats; and the protection of Rincon Reservation waters as cultural, economic and spiritual resources of the Rincon people.

§ 8.919 NON-POINT SOURCE MANAGEMENT PROGRAM

(a) **Identification of Best Management Practices.** Best Management Practices (“BMP’s”) are those practices determined to be practical, acceptable to the public, and effective in preventing water Pollution or reducing the amount of Pollution generated by non-point sources. Best Management Practices include information and education programs, technical and financial assistance, technology transfer, demonstration projects, monitoring/evaluation systems, and regulation and enforcement. The Rincon Environmental Department and other departments within the Rincon Band will develop and present BMP’s to the Tribal Council for approval in accordance with Tribal Law.

(b) **Reservation Wide Program Objectives.** Reservation wide program objectives include current as well as proposed programs and identify activities, products, responsible agencies, and funding. The Tribal Government, acting by and through, Tribal Administration and the RED, is responsible for water and natural resource management activities, such as, herbicide use, wellhead protection, residential and commercial building, utility and road building which will require the adoption of approved BMPs. The following non-exhaustive list of BMP’s will need to be approved by the Tribal Council upon recommendation by Tribal Administration and the RED:

- (1) Land Assignment and Lease Ordinance;
- (2) Habitat Conservation Ordinance;
- (3) Pollution Discharge Prohibition Ordinance;
- (4) Land Use, Development Standards and Zoning Plan;
- (5) Pesticides Ordinance; and
- (6) Road Construction

§ 8.920 RULE-MAKING AUTHORITY

(a) The RED shall have the authority to, and shall promulgate, amend, or rescind regulations relating to standards of quality for waters of the Rincon Reservation and for substances discharged therein in order to maintain the highest possible standards in accordance with the public policy of the Rincon Band as declared in Section 8.901 & 8.902. The regulations, which shall not be effective until approved by the Tribal Council, shall be structured according to requirements under the federal Clean Water Act, 33 U.S.C.A. §§ 1251-1387 (CWA) as amended from time to time, and shall specifically include:

- (1) use designations consistent with the requirements of the Clean Water Act;
- (2) methods used and analyses conducted to support the water quality

standards;

(3) water quality criteria sufficient to protect the designated uses, including criteria for priority toxic pollutants and biological criteria;

(4) an antidegradation policy and implementation methods consistent with Federal Water Quality Standards Regulations;

(5) general information supporting the adequacy of the scientific basis of the standards, as well as information on general policies applicable to Rincon Band standards that may affect their application and implementation; and certification that the regulations for water quality standards have been adopted pursuant to the requirements of this Ordinance; and

(6) ensure that water quality sampling and monitoring activities comply with the Rincon Reservation Quality Assurance Project Plan.

PROHIBITED ACTS, ENFORCEMENT, REVIEW, AND APPEALS

§ 8.921 NOTICE OF VIOLATION; EMERGENCY ORDERS

This Ordinance shall be considered a Rincon Environmental Ordinance for purposes of the Rincon Environmental Enforcement Ordinance. For any violations of this Ordinance, the RED shall have authority to issue Notices of Violation and Emergency Orders pursuant to § 8.308 of the Rincon Environmental Enforcement Ordinance.

(a) **Hearing and Hearing Process.** Any Person served with a Notice of Violation for a violation of this Ordinance may file a “Request for Hearing” with the Tribal Court within five (5) working days from receipt of the “Notice of Violation” pursuant to Rincon Environmental Enforcement Ordinance § 8.309. Upon receipt of a properly filed “Request for Hearing,” the Tribal Court shall schedule and conduct a hearing pursuant to Rincon Environmental Enforcement Ordinance § 8.309 (b).

(b) Remedies; Civil Penalties; Enforcement of Tribal Court Orders

(1) Remedies available to the Rincon Band for violations of this Ordinance shall be governed by the Rincon Environmental Enforcement Ordinance § 8.310.

(2) Civil Penalties which may be imposed against Persons determined to have violated this Ordinance shall be governed by the Rincon Environmental Enforcement Ordinance § 8.311.

(c) Rincon Environmental Enforcement Ordinance § 8.312 shall apply to any orders issued by the Tribal Court that arise from violations of this Ordinance.

(d) Any Person who in violation of this Ordinance discharges any pollutant into the waters of the Rincon Reservation shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Rincon Reservation and restore the quality of the waters of the Rincon Reservation to their condition as they existed immediately prior to the discharge.

MISCELLANEOUS

§ 8.922 NO WAIVER OF SOVEREIGN IMMUNITY

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

§ 8.923 SEVERABILITY

If any provision of this Ordinance or the application thereof to any Person or circumstance shall be held unconstitutional or invalid by the Tribal Council, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.

ATTACHMENT 5

Rincon Band Hazardous Material Control Ordinance, Rincon Tribal Code §8.600

**RINCON BAND OF LUISEÑO MISSION
INDIANS RINCON INDIAN RESERVATION,
CALIFORNIA**



**RINCON HAZARDOUS MATERIAL CONTROL
ORDINANCE
RINCON TRIBAL CODE § 8.600**

Adopted on January 30, 2013

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§ 8.600 PURPOSE AND DECLARATION OF POLICY

(a) The beneficial stewardship of the land, air, and waters of the Rincon Reservation is a solemn obligation of the present generation for the benefit of future generations.

(b) The Reservation Population residing on or doing business within the exterior boundaries of the Rincon Reservation benefits from a healthful environment and each Person has a responsibility to preserve and protect the quality of the Reservation Environment.

(c) The Tribal Council finds that the release of Hazardous Material into the Reservation Environment poses a direct threat to life, health, property, and natural resources of the Rincon Band, its people, and fee and trust lands. Pollution sources are currently known to, or suspected to, contaminate Reservation Environment, Rincon Reservation land, surface water and ground waters for which existing federal law may not apply.

(d) The purpose of this Ordinance is to provide remedial law for the cleanup of Hazardous Material sites and to prevent the creation of future hazards due to improper disposal of Hazardous Material on or into the Reservation Environment.

§ 8.601 APPLICABILITY TO NON-INDIAN ACTIVITIES ON NON-INDIAN OWNED FEE LANDS WITHIN THE RESERVATION

Applicability of tribal environmental ordinances to non-Indian activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation.

(a) In *Montana v. United States*, the Supreme Court held that tribes generally do not have jurisdiction over non-Indian activities occurring on reservation fee lands, subject to two important exceptions:

(1) A tribe may regulate the activities of non-members who enter consensual relationships with the Rincon Band or its members, through commercial dealings, contracts, leases, or other arrangements; and

(2) A tribe may also retain inherent power to exercise civil authority over conduct that threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Rincon Band.

(b) Prior to applying a Rincon land use or environmental ordinance to non-Indian activities occurring on fee lands located within the Rincon Reservation, the Rincon Environmental Department must first determine that the non-Indian activities seeking to be regulated fall within one of the exceptions set forth in Section 8.601(a).

(1) The Rincon Environmental Department shall include a written determination under Section 8.601(a) within any Notice of Violation in which non-Indian activities occurring on fee lands located within the Rincon Reservation are the basis for the violation.

(2) The recipient of any such Notice of Violation shall be entitled to a preliminary jurisdictional hearing before the Tribal Court.

(3) If the recipient objects to tribal jurisdiction and requests a jurisdictional hearing, the burden shall be on the Rincon Band to establish tribal jurisdiction pursuant to federal common law.

§ 8.602 DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply:

(a) **"Attorney General"** or **"Tribal Attorney"** means the attorney authorized by the Tribal Council to carry out the duties as described in the Ordinance.

(b) **"Agreed Order"** means an order issued by the Rincon Environmental Department under this Ordinance with which the Potentially Liable Person receiving the order agrees to comply.

(c) **"Facility"** means:

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(2) Any site or area where a Hazardous Material, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(d) **"Federal Cleanup Law"** means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended.

(e) **"Foreclosure and its equivalents"** means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the Holder acquires title to or possession of a Facility securing a loan or other obligation.

(f) **"Hazardous Material"** means:

(1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(A) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.

(2) Any "hazardous waste," defined as any waste which:

(A) Will persist in a hazardous form for three (3) years or more at a disposal site; and

(B) While in its persistent form:

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or

(ii) Is toxic to people or wildlife; or

(iii) Adversely affects living organisms in soil, sediment, and water, or air; or

(C) If disposed of at a disposal site in such quantities or concentrations as might present a hazard to people or the environment.

(3) Any substance included as a “listed waste” under 40 CFR §261.30 through 261.33.

(4) Any substance classified as a “characteristic waste” defined in the 40 CFR §261.20 through §261.24 as exhibiting one of four hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(5) Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(6) Any substance that is a hazardous substance pursuant to 42 U.S.C. § 9601(14).

(7) Petroleum or petroleum products.

(A) The term Hazardous Material does not include crude oil or any fraction thereof or petroleum when contained in an underground or aboveground storage tank from which there is not a release, if the tank is in compliance with all applicable federal and Tribal Laws.

(8) Any substance or category of substances, including solid waste decomposition products, determined by the Rincon Environmental Department to present a threat to human health or the environment if released into the environment.

(g) **"Hazardous Material Account"** means an account of money set aside for uses described in Section 8.607.

(h) **"Health Hazard"** is a classification of a chemical for which there is statistically significant evidence that acute or chronic health effects are capable of occurring in exposed Persons. The term “Health Hazard” includes chemicals that are toxic or highly toxic.

(i) **"Holder"** means a Person who holds indicia of ownership primarily to protect a security interest. A Holder includes the initial Holder such as the loan originator, any subsequent Holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other Person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other Person who acts on behalf or for the benefit of a Holder. A Holder can be a public or privately owned financial institution, receiver, conservator; loan guarantor, or other similar Persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(j) **"Independent remedial actions"** means remedial actions conducted without the Rincon Environmental Department oversight or approval, and not under an order, Agreed Order, or consent decree.

(k) **"Indicia of ownership"** means evidence of a security interest, evidence of an

interest in a security interest, or evidence of an interest in a Facility securing a loan or other obligation, including any legal or equitable title to a Facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased Facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the Facility that are held primarily to protect a security interest.

"Owner or Operator" means:

- (1)** Any Person with any ownership interest in the Facility or who exercises any control over the Facility; or
- (2)** In the case of an abandoned Facility, any Person who had owned, or operated, or exercised control over the Facility any time before its abandonment;
- (3)** The term does not include:
 - (A)** The Rincon Band or any Tribal Instrumentality thereof which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the Rincon Band involuntarily acquires title. This exclusion does not apply to an instrumentality of the Rincon Band which is subject to a waiver of sovereign immunity, which has caused or contributed to the release or threatened release of a Hazardous Material from the Facility;
 - (B)** Any Person who has any ownership interest in, operates, or exercises control over real property where a Hazardous Material has come to be located solely as a result of migration of the Hazardous Material to the real property through the groundwater from a source off the property, if:
 - (i)** The Person can demonstrate that the Hazardous Material has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the Hazardous Material that has migrated onto the property;
 - (ii)** The Person has not caused or contributed to the release of the Hazardous Material;
 - (iii)** The Person does not engage in activities that damage or interfere with the operation of remedial actions installed on the Person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;
 - (iv)** If requested, the Person allows the Rincon Environmental Department or Potentially Liable Persons who are subject to an order, Agreed Order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the Rincon Environmental Department. The Person may attempt to negotiate an access agreement before allowing

access; and

(v) Legal withdrawal of groundwater does not disqualify a Person from this exemption.

(C) Any Person that, without participating in the management of a Facility, holds indicia of ownership primarily to protect the security interest of the Person in the Facility.

(l) **"Person"** means any Rincon Band member, non-member Indian or non-Indian individual, trust, firm, association, partnership, consortium, joint venture, commercial entity, political subdivision, government agency, municipality, industry, public or private corporation, Tribal Instrumentality subject to a waiver of sovereign immunity, or any other entity whatsoever.

(m) **"Physical Hazard"** is a chemical for which there is evidence that it is a combustible liquid, cryogenic fluid, explosive, flammable (solid, liquid or gas), organic peroxide (solid or liquid), oxidizer (solid or liquid), oxidizing gas, pyrophoric (solid, liquid or gas), unstable (reactive) material (solid, liquid or gas) or water-reactive material (solid or liquid).

(n) **"Potentially Liable Person"** means any Person whom the Rincon Environmental Department finds, based on credible evidence, to be liable under Section 8.604(a). The Rincon Environmental Department shall give notice to any such Person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(o) **"Reservation Environment"** means the environment within the exterior boundaries of the Rincon Reservation and other lands held in trust status by the U.S. federal government for the Rincon Band or its members.

(p) **"Reservation Population"** means Persons residing within or doing business within the Rincon Reservation.

(q) **"Release"** means any intentional or unintentional entry of any Hazardous Material into the environment, including but not limited to the abandonment or disposal of containers of Hazardous Material.

(r) **"Remedy" or "Remedial Action"** means any action or expenditure consistent with the purpose of this Ordinance to identify, eliminate, clean up, or minimize any threat of potential threat posed by Hazardous Material to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a Hazardous Material and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(s) **"Rincon Band"** means the Rincon Band of Luiseño Indians, a sovereign Indian Band which is recognized as such by the U.S. federal government. Reference to "Tribe" or "Band" in any existing or future environmental ordinance shall mean the "Rincon Band".

(t) **"Rincon Environmental Department" or "RED"**, is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances and management of the Rincon Band's natural resources unless otherwise specified.

(u) **"Sediment"** means unconsolidated material eroded from parent rock, including soil and/or any man-made unconsolidated solid material of a particulate nature, which exists below the ordinary high water mark of any water body or wetland.

(v) **"Tribal Council"** is the five-member committee established under Section 3

(a) of the Rincon Band's Articles of Association. "Tribal Council" shall be synonymous with "Business Committee" or "Rincon Business Committee" as used in any existing or future tribal ordinance.

(w) "**Tribal Court**" means the Intertribal Court of Southern California or other tribal forum designated by the Business Committee to hear and decide violations of Tribal Laws.

(x) "**Tribal Instrumentality**" means a unit of Tribal government or a Tribal organization that is ultimately responsible to the Tribal Council.

(y) "**Tribal Laws**" means laws, ordinances, codes, policies and procedures enacted by the Rincon Business Committee.

§ 8.603 RINCON ENVIRONMENTAL DEPARTMENT (RED)

(a) Powers and Duties. The Rincon Environmental Department may exercise the following powers in addition to any other powers granted by Tribal Law or federal law:

(1) Investigate, provide for investigating, or require Potentially Liable Persons to investigate any releases or threatened releases of Hazardous Material, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a Hazardous Material may exist, the RED's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The RED shall give reasonable notice before entering property unless an emergency prevents such notice. The RED may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the RED deems necessary;

(2) Conduct, provide for conducting, or require Potentially Liable Persons to conduct remedial actions including investigations under Section 8.603(a)(1) to Remedy releases or threatened releases of Hazardous Material. In carrying out such powers, the RED's authorized employees, agents, or contractors may enter upon property. The RED shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the RED shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(3) Retain contractors and consultants to assist the RED in carrying out investigations and remedial actions;

(4) Carry out all Tribal programs authorized under the Federal Cleanup Law, the Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq., as amended, and other federal laws of Tribal Laws;

(5) Classify substances as Hazardous Material for purposes of Section 8.602(f);

(6) Issue Notices of Violation, and enter into consent decrees or Agreed Orders that include, or that may be conditioned upon, deed restrictions or

other appropriate institutional controls as may be necessary to protect human health and the environment from a release or threatened release of a Hazardous Material from a Facility;

(7) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(8) Provide informal advice and assistance to Persons regarding the administrative and technical requirements of this Ordinance. This may include site-specific advice to Persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the RED. As a part of providing this advice and assistance for independent remedial actions, the RED may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this Ordinance or whether the RED believes further remedial action is necessary at the Facility. The RED may collect, from Persons requesting advice and assistance, the costs incurred by the RED in providing such advice and assistance; however, the RED shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation; and

(9) Take any other actions necessary to carry out the provisions of this Ordinance, including proposing that the Tribal Council amend this Ordinance.

(b) The RED shall to the best of its ability implement all provisions of this Ordinance, including the cleanup standards further described in Section 8.608 and to the maximum extent practicable, institute investigative and remedial actions where appropriate; and the RED shall:

(1) Require the reporting by an Owner or Operator of releases of Hazardous Material to the environment that may be a threat to human health or the environment. This information must be reported verbally as soon as possible with written follow up notification no later than one (1) work day following the discovery of the release. A written report must be submitted to the RED as soon as practicable, and not later than sixty (60) days after discovery of the release. Consistent with the purposes of this Ordinance, the RED may provide for exemptions from reporting requirements. Reporting requirements under this Ordinance shall not modify any requirements provided for under other laws.

(2) Establish reasonable deadlines for initiating an investigation of Hazardous Material after the RED receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and

(3) Enforce clean-up standards set forth in Section 8.608.

(c) The RED may, as available resources permit, establish a program to identify potential Hazardous Material sites and to encourage Persons to provide information about Hazardous Material sites.

(d) The RED may require Facility Owners and Operators that treat, store, and/or dispose of Hazardous Material to demonstrate, to the satisfaction of the RED, that sufficient safeguards and measures are present to minimize an unauthorized release from becoming a threat to human health or the environment.

§ 8.604 RELEASE OF HAZARDOUS MATERIAL

(a) **Liability.** Except as provided in Section 8.603(c), the following Persons are liable with respect to a release of a Hazardous Material at a Facility:

- (1) The Owner or Operator of the Facility;
- (2) Any Person who owned or operated the Facility at the time of disposal or release of the Hazardous Material;
- (3) Any Person who by contract, agreement, or otherwise arranged for Hazardous Material to be present at the Facility, whether for disposal, treatment, or otherwise;
- (4) Any Person who by contract, agreement, or otherwise arranged with a transporter for transport for disposal or treatment of the Hazardous Material at the Facility, or otherwise generated Hazardous Material disposed of or treated at the Facility;
- (5) Any Person:
 - (A) Who accepts or accepted any Hazardous Material for transport to a disposal, treatment, or other Facility selected by such Person from which there is a release or a threatened release for which remedial action is required, unless such Facility, at the time of disposal or treatment, could legally receive such substance; or
 - (B) Who accepts a Hazardous Material for transport to such a Facility and has reasonable grounds to believe that such a Facility is not operated in accordance with Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., as amended, and programs appropriately delegated under RCRA; and
- (6) Any Person who both sells a Hazardous Material and is responsible for written instructions for its use if:
 - (A) The substance is used according to the instructions; and
 - (B) The use constitutes a release for which remedial action is required at the Facility.
- (7) Each Person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of Hazardous Material. The RED is empowered to recover all costs and damages from Persons liable therefore.

(b) **Exceptions.** The following Persons are not liable under this section:

- (1) Any Person who can establish that the release or threatened release of a Hazardous Material for which the Person would be otherwise responsible was caused solely by:

(A) An act of God;

(B) An act of war; or

(C) An act or omission of a third party (including but not limited to a trespasser) other than:

(i) An employee or agent of the Person asserting the defense, or

(ii) Any Person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Person asserting this defense to liability.

(2) This defense only applies where the Person asserting the defense has exercised the utmost care with respect to the Hazardous Material, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(3) Any Person who is an Owner, past Owner, or purchaser of a Facility and who can establish by a preponderance of the evidence that at the time the Facility was acquired by the Person, the Person had no knowledge or reason to know that any Hazardous Material, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the Facility. This Section 8.604(b)(3) is limited as follows:

(A) To establish that a Person had no reason to know, the Person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this Section 8.604(b)(3) shall take into account any specialized knowledge or experience on the part of the Person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(B) The defense contained in this Section 8.604(b)(3) is not available to any Person who had actual knowledge of the release or threatened release of a Hazardous Material when the Person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(C) The defense contained in this Section 8.604(b)(3) is not available to any Person who, by any act or omission, caused or contributed to the release or threatened release of a Hazardous Material at the Facility;

(4) Any natural Person who uses a Hazardous Material lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure that does not result in an unauthorized release when that Person is:

(A) A resident of the dwelling; or

(B) A Person who, without compensation, assists the resident in the use of the substance.

(5) Any Person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable Tribal Law and federal laws and regulations.

(6) No Tribal, federal, state or local government shall be liable under this Ordinance for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a Hazardous Material generated by or from a Facility owned by another person. This exception shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the federal, state or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

§ 8.605 ENFORCEMENT: REQUEST FOR HEARING

(a) **Notice of Violation.** With respect to any release, or threatened release, for which the RED does not conduct or contract for conducting remedial action and for which the RED believes remedial action is in the public interest, the RED shall issue a “Notice of Violation” pursuant to the Rincon Environmental Enforcement Ordinance, RTC § 8.300. Any Potentially Liable Person who refuses, without sufficient cause, to comply with an order or Agreed Order of the RED is liable in an action brought by the RED for:

(1) Up to three times the amount of any costs incurred by the RED as a result of the party's refusal to comply; and

(2) A civil penalty of up to five thousand (\$5,000) dollars for each day the party refuses to comply. The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after the date this Ordinance is enacted and adopted by the Tribal Council.

(b) **Recovery of Costs.** The RED shall seek, by filing an action if necessary, to recover the amounts spent by the RED for investigative and remedial actions and orders, including amounts spent prior to the date this Ordinance is enacted and adopted by the Tribal Council.

(c) **Additional Relief.** The RED may request that the Office of the Attorney General bring an action to secure such additional relief as is necessary to protect human health and the environment under this Ordinance.

(d) **Civil Actions.** Civil actions under this section shall be brought in Tribal Court.

(e) **Request for Hearing.** A Person served with a Notice of Violation may contest the RED's findings by filing a “Request for Hearing” with the Tribal Court pursuant to the Rincon Environmental Enforcement Ordinance, RTC § 8.300. The Request for Hearing must be filed within five (5) working days from receipt of the Notice of Violation.

§ 8.606 JUDICIAL REVIEW

The RED's investigative and remedial decisions under Sections 8.603 and its decisions regarding liable Persons under Sections 8.604(a) and Section 8.602(m) shall be reviewable exclusively in

Tribal Court and only at the following times:

- (a) Pursuant to a Request for Hearing;
- (b) In a cost recovery suit under Section 8.605(b);
- (c) In a suit by the RED under Section 8.605(c);
- (d) To enforce an order, a settlement agreement, or an Agreed Order;
- (e) To seek a civil penalty under this Ordinance; and
- (f) In a suit by the RED to compel investigative or remedial action.

§ 8.607 DEPOSITS TO HAZARDOUS MATERIAL ACCOUNT

(a) There shall be established a Hazardous Material Account to be administered by the Rincon Band.

(b) The following moneys shall be deposited into the Hazardous Material Account:

- (1) The costs of remedial actions recovered under this Ordinance;
- (2) Penalties collected or recovered under this Ordinance; and
- (3) Any other money appropriated or transferred to the account by the RED. Moneys in the account may be used only to carry out the purposes of this Ordinance including but not limited to the following activities:
 - (A) The Hazardous Material cleanup program required under this Ordinance;
 - (B) Matching funds required under any Tribal Law or federal law;
 - (C) Tribal programs for the safe reduction, recycling, or disposal of Hazardous Material from households, small businesses, and agriculture;
 - (D) Hazardous Material emergency response training; and
 - (E) Water and environment health protection and monitoring programs;

(c) Moneys in the Hazardous Material Account may be spent only after approval of a budget by the Tribal Council. All earnings from investment of balances in the account shall be credited to the account.

§ 8.608 SCREENING LEVELS, RISK ASSESSMENTS, AND STANDARDS

(a) **Contaminated Soil, Soil Vapor, and Groundwater: Environmental Screening Levels and Risk Assessments.** On January 5, 1012 the Tribal Council enacted Resolution Number 2012-02, adopting the technical document “Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater (Interim Final – November 2007, Revised May 2008)” for use by the Rincon Band when evaluating potential contamination and assessing the need for additional investigation and remediation. The RED shall employ the screening levels set forth in the technical document when assessing commonly detected contaminants in soil, soil vapor, or groundwater, to determine the level of risk, and the need for additional site investigation and/or remediation. The RED shall also employ the tiered risk

assessment methodology set forth in the technical document, unless site-specific circumstances warrant otherwise.

(b) Surface Water and Sediment Contamination: Environmental Screening Levels; Risk Assessments. [reserved].

(c) Air Quality Standards. [reserved].

(d) The RED may consult with state and federal agencies, institutes of higher learning, and other entities with expertise in toxic cleanup and human or environmental toxicology in order to determine additional or alternative background, screening and clean up levels which are protective of human health and the environment.

§ 8.609 NO WAIVER OF SOVEREIGN IMMUNITY

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

§ 8.610 CAPTIONS

As used in this Ordinance captions constitute no part of the law.

§ 8.611 CONSTRUCTION

The provisions of this Ordinance are to be liberally construed to effectuate the policies and purposes of this Ordinance. In the event of conflict between the provisions of this Ordinance and any other act, the provisions of this Ordinance shall govern.

§ 8.612 EFFECTIVE DATE

The effective date of this Ordinance shall be the date this Ordinance is enacted and adopted by the Tribal Council. This Ordinance shall apply retroactively.

§ 8.613 SEVERABILITY

If any provision of this Ordinance or the application thereof to any Person or circumstance shall be held unconstitutional or invalid by the Tribal Council, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.