

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



UNAUTHORIZED FACILITIES TRESPASS ORDINANCE

RINCON TRIBAL CODE § 8.800

Adopted May 14, 2026

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§ 8.800 **TITLE**

This chapter shall be known as and may be cited as the “Facilities Trespass Ordinance.”

§ 8.801 **FINDINGS**

The Tribal Council finds that enacting this chapter is necessary because:

- (a) Tribal lands and resources need protection from unauthorized use, occupancy and Trespass by non-Indian Persons and entities;
- (b) The Secretary has not adequately discharged her fiduciary obligation to protect the Tribe’s exclusive rights to use and occupancy of Tribal lands;
- (c) The Tribe wishes to assert the inherent sovereign power to exclude unauthorized Persons and entities from Tribal lands.

§ 8.802 **PURPOSE**

The purpose of this chapter is to:

- (a) Adopt rules for unauthorized use, occupancy and Trespass of Tribal Lands to strengthen Tribal sovereignty and increase Tribal control over Tribal lands and resources;
- (b) Govern use, occupancy, Trespass and unauthorized uses of Tribal Lands that impact continued eligibility for issuance and maintenance of Rights-of-Way and Service Lines pursuant to Federal law, 25 C.F.R. § 169.
- (c) Provide rules governing eligibility for the issuance of Rights-of-Way and Service Line over Tribal Lands.
- (d) Protect and assert the Tribe’s inherent sovereign power to exclude unauthorized Persons, entities and property from Tribal Lands.

§ 8.803 **AUTHORITY**

The Tribal Council enacts this Ordinance pursuant to its plenary, executive and legislative authority under the Articles of Association, Sections 1 and 6.

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§ 8.804 **APPLICABLE LAW**

This Ordinance and other laws of the Tribe shall govern all matters arising under this Ordinance to the extent not preempted by applicable Federal law. In the absence of applicable Tribal or Federal law, the Tribal Court may apply common law principles in interpreting any matter arising under this Ordinance. The Tribal Court shall remit or modify any damages, assessments or penalties prescribed by this Ordinance, as may be necessary to assure compliance with the requirements of Due Process.

§ 8.805 **SOVEREIGN IMMUNITY**

The Tribe, by adoption of this Ordinance, does not waive its sovereign immunity in any respect. No suit or action shall be allowed, permitted or maintained in any forum, including the Tribal Court, against the Tribe, its agencies, entities, arms, enterprises, officers, employees, contractors or agents.

§ 8.806 **DEFINITIONS**

The following terms, wherever used or referred to in this Ordinance, shall have the following meanings, unless a different meaning clearly appears from the text or context:

(a) **“Articles of Association”** means that certain organizational document setting forth rules of procedure that govern operations and recognize the governing body of the Tribe, adopted by the General Membership on February 14, 1960, and approved by the Commissioner of Indian Affairs on March 15, 1960.

(b) **“Business Committee”** means the five-member Business Committee established under Section 3 (a) of the Articles of Association. Business Committee shall be synonymous with Tribal Council or Rincon Tribal Council as may be used in this Ordinance or any existing or future Tribal ordinance.

(c) **“Chairperson”** means the Person elected to that position pursuant to Section (3)(a) of the Articles of Association. The Vice-Chair may act for the Chairperson as provided in the Articles of Association and this Ordinance.

(d) **“Consumer Price Index”** or **“CPI”** means the Consumer Price Index for All Urban Consumers (CPI-U), All Items in U.S. City Average, [CPIAUCSL], using the index value in effect as of March 1 of the applicable calendar year.

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(e) **“CPI Adjustment Factor”** means, for any applicable year, a ratio, the numerator of which is the CPI for that applicable year and the denominator of which is the CPI for the current year.

(f) **“General Membership”** means enrolled members who are twenty-one years (21) of age or older pursuant to Section 5 of the Articles of Association.

(g) **“Ground Lease Rate”** means ten percent (10%).

(h) **“Housing, Facilities & Land (“HFL”) Manager”** means the tribal official whose duties are described at Section 8.807 of this Ordinance.

(i) **“Lease”** means a written contract with the Tribe for a possessory interest in Tribal Land for a specified purpose and duration pursuant to the Rincon Business Leasing Regulations, RTC § 7.600 *et seq.*, or the inherent leasing authority of a tribal corporation organized under Section 17 of the Indian Reorganization Act.

(j) **“Member”** means an enrolled member of the Tribe.

(k) **“Occupancy Right”** means the right to enter and occupy or use Tribal Land pursuant to this Ordinance.

(l) **“Ordinance”** means this Facilities Trespass Ordinance, as amended from time to time.

(m) **“Person”** means any individual Person or entity, a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.

(n) **“Public Interest”** means the best interest of the Tribe’s current and future Members, including strengthening Tribal sovereignty, protecting the political integrity, safety, health and welfare of the Tribe, preserving and promoting Tribal culture and traditions, safeguarding Tribal air, water, landscapes and other natural resources and developing and assisting the Tribe’s public and private sector economy, all as determined by the Tribal Council pursuant to its plenary, executive and legislative authority under the Articles of Association.

(o) **“Reservation”** means all lands identified in that certain 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 adding land issued on January 20, 1971, also

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including, but not limited to, all lands thereafter acquired by the United States in trust for the benefit of the Tribe and proclaimed by the Secretary, acting by and through the Assistant Secretary of Indian Affairs acting pursuant to 209 D.M. 8.1, in accordance with the authority conferred by Section 7 of the Indian Reorganization Act of 1934.

(p) **“Right-of-Way”** means an easement or other legal right or interest, consisting of the right to use or control for a specified purpose and/or to go over or across certain Tribal Land, including, but not limited to, building, operating or maintaining a ditch, canal or other conveyance facility, a line for utility purposes or road but exclusive of Service Lines.

(q) **“Right-of-Way Agreement”** means the authorization and agreement for right of way prescribed by 25 C.F.R. § 169.107, or successor regulation, constituting Tribal consent for the grant of a Right-of-Way over Tribal Land approved by the Secretary.

(r) **“Secretary”** means the United States Secretary of the Interior acting by and through his or her designee in the Bureau of Indian Affairs.

(s) **“Service Line”** means a line that branches off from facilities for which a Right-of-Way must be obtained. A service line is a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a single house, business, or other structure.

(t) **“Service Line Agreement”** means the agreement between the Tribe and a service provider required by 25 C.F.R. § Part 169, Subpart B, pursuant to which a service provider may install a Service Line over Tribal Land to provide services to the owners or authorized occupants or users of Tribal Land.

(u) **“Trespass”** means the unauthorized occupancy and use of unlawful action on or entry onto the property of another.

(v) **“Tribe”** means the Rincon Band of Luiseño Indians, its agencies, entities, arms and enterprises, either together or separately.

(w) **“Tribal Council”** means 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.

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(x) **“Tribal Court”** means the Rincon Civil Trial Court and Rincon Court of Appeals.

(y) **“Tribal Land”** means land in which the Tribe has legal interest, including, but not limited to, land within the Reservation that is held in trust by the United States for the benefit of the Tribe and subject to civil regulatory jurisdiction of the Tribe, inclusive of assigned, fee, restricted or allotted lands whether owned wholly or in part, by the Tribe.

(z) **“United States”** means the same as Secretary.

§ 8.807 ADMINISTRATION

- (a) Any person using or planning to use an easement for a Right of Way or a Service Line without proper existing authorization shall file an application with the HFL Manager. The HFL Manager shall determine whether an applicant has satisfied all application requirements of this Ordinance, which for a Right of Way shall include all of the materials required under 25 C.F.R. § 169.102, except those required under 25 C.F.R. § 169.102 (b) (4), (5), (6) and (9). If the HFL Manager identifies deficiencies in an application for Right-of-Way or Service Line Agreement, the HFL Manager shall advise the applicant and provide a reasonable period of time for the applicant to cure the application deficiencies.
- (b) If HFL Manager determines that a Right-of-Way application meets the requirements of this Ordinance and therefore is complete, the HFL Manager shall submit the application packet to the Tribal Council for referral to the General Membership for approval or disapproval of the Right-of-Way. The Right-of-Way application packet submitted to the Tribal Council shall include:
- (1) Relevant documents from the application packet submitted to the BIA pursuant to 25 C.F.R. § 169.102;
 - (2) Any notarized statement from the applicant-grantee pursuant to Section 8.809;
 - (3) A projected statement of compensation to be paid to the Tribe pursuant to 25 C.F.R. § 169.110 and Section 8.810 (a);

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- (4) A projected statement of taxes, fees and assessments to be paid to the Tribe pursuant to Section 8.814;
 - (5) The recommendation of the HFL Manager to approve or disapprove the Right-of-Way Agreement; and
 - (6) Any other relevant documents.
- (c) The HFL Manager shall review and recommend all Service Line Agreement requests to the Tribal Council for review and approval, provided that a Right-of-Way Agreement, pursuant to 25 C.F.R. § 169, that feeds the relevant Service Line is in effect prior to Tribal Council approval of the Service Line Agreement.

§ 8.808 GENERAL MEMBERSHIP RIGHT-OF-WAY APPROVAL

- (a) The General Membership shall have the authority to approve or disapprove a Right-of-Way application by resolution at a duly noticed meeting of the General Membership.
- (b) The Tribal Council shall have the authority to approve or disapprove the business terms and conditions of the Right-of-Way Agreement and whether the Right-of-Way Agreement is in the Public Interest and in accordance with Tribal Law.
- (c) All realty-related interests authorized by this Ordinance shall be evidenced by the signature of the Chairperson on all such instruments and related documents.

§ 8.809 APPLICATIONS RELATING TO UNAUTHORIZED FACILITIES

- (a) An applicant for a Right-of-Way or Service Line who owns, operates, licenses or otherwise benefits from unauthorized existing facilities on Tribal Land, or any applicant who is the successor-in-interest of such owner, operator, licensee or beneficiary, shall include in any application for a Right-of-Way or Service Line Agreement a notarized statement describing:
 - (1) The date and the circumstances under which the facilities were placed on Tribal Lands,

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- (2) Whether and, if so, when and how, the siting or placement of the facilities on Tribal Lands was approved;
 - (3) If the siting or placement of the facilities on Tribal Lands was previously approved, when that approval ended, and;
 - (4) Copies of any instruments or other documentation related to the above matters.
- (b) No Right-of-Way Agreement application under 25 C.F.R. § 169 shall be considered complete for an applicant described under Section 8.807 unless the applicant first pays to the Tribe an amount not less than the sum, for each year and fraction thereof the facility was present without authorization, of the following: \$1.50 in 2026 dollars multiplied by the Ground Lease Rate, multiplied by the CPI Adjustment Factor for the applicable year multiplied by the length (in feet) of the easement area, multiplied by the width (in feet) of the easement area plus interest calculated at an annual rate of seven (7) percent per annum based on the amount owed for each year that the facility was present without authorization.
- (c) For illustrative purposes, if a 10-foot-wide easement that is 1,000 feet long was on Tribal Lands without approval beginning sometime in 2021 and through sometime in 2026, the following amount must be paid before an application could be considered complete:

$\$1.50 * 0.1 * (2021 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1.07^5$ plus

$\$1.50 * 0.1 * (2022 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1.07^4$ plus

$\$1.50 * 0.1 * (2023 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1.07^3$ plus

$\$1.50 * 0.1 * (2024 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1.07^2$ plus

$\$1.50 * 0.1 * (2025 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1.07$, plus

$\$1.50 * 0.1 * (2026 \text{ CPI}/2026 \text{ CPI}) * 10 \text{ feet} * 1000 \text{ feet} * 1$ (no interest),

which equals \$1,687.69 plus \$1,712.49 plus \$1,679.16 plus \$1,624.03 plus \$1,553.94 plus \$1,500.00 for a total of \$9,757.31.

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§ 8.810 **ANNUAL COMPENSATION**

- (a) Without notice or demand, the Right-of-Way Agreement shall provide for annual payment of just compensation that is in the Public Interest, as determined by the Tribe, but not less than \$ 1.50 per year in 2026 dollars, adjusted annually in accordance with the Consumer Price Index, multiplied by the Ground Lease Rate, multiplied by the length (in feet) of the easement area, multiplied by the width (in feet) of the easement area.
- (b) The Tribe may require or permit alternatives to the compensation identified in Section 8.807 (b) (3) that it deems in the Public Interest, including, but not limited to:
 - (1) In-kind consideration;
 - (2) Payments based on throughput of the line or road or percentage of income;
 - (3) Payments at specific stages during the life of the Right-of-Way grant, such as fixed annual payments during construction, payments based on income during an operational period; or
 - (4) Bonuses.
- (c) Payments due under a Right-of-Way Agreement shall be made directly to the Tribe.

§ 8.811 **CIVIL TRESPASS**

- (a) **Trespass.** A Person commits civil Trespass who intentionally and without the Tribe's consent:
 - (1) Enters Tribal Land or causes an object, structure, chattel or a third Person to do so, or
 - (2) Remains on Tribal Land, or
 - (3) Fails to remove from Tribal Land an object, structure or chattel which he or she is under a duty to remove.

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- (b) **Burden of Proof.** In any action to enforce this Ordinance, the defendant shall bear the burden of proof on the issue of consent.
- (c) **Failure to Remove Object, Structure or Chattel Placed on Tribal Land.** A Trespass is committed by the continued presence on Tribal Land of an object, structure or chattel that a Person or his predecessor in legal interest has placed on Tribal Land pursuant to a license or privilege conferred on the Person:
- (1) With the consent of the Tribe if the Person fails to remove it after the consent has been effectively terminated, or
 - (2) Without consent of the Tribe, if the Person fails to remove it after the privilege has been terminated by the accomplishment of the purpose for the license or privilege.
- (d) **Separate Acts of Trespass.** A separate violation of this Ordinance is committed with respect to each parcel of Tribal Land on which a Trespass is committed under Section 8.811 (a) and Section 8.811 (c) for each day on which a Trespass occurs.
- (e) **Remedies.** The following remedies are cumulative and apply separately to each act of Trespass:
- (1) **Ejectment.**
 - (A) A Person in Trespass shall be subject to immediate ejectment, at the trespasser's expense.
 - (B) In lieu of ejectment, the Tribe, at its discretion, may order the Person in Trespass to apply for a Lease or Right-of-Way, as applicable.
 - (2) **Accounting.**
 - (A) The Tribe shall be entitled to obtain from a Person in Trespass or who was in Trespass, an accounting of rents, profits and any avoided costs derived from the trespassed property.
 - (3) **Damages and Penalties.** For each act of Trespass, the Tribe shall be entitled to the greater of:

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- (A) An amount equal to:
- (i) Rents, profits and any avoided costs derived from the trespassed property; and
 - (ii) Damages caused to the trespassed property; or
 - (iii) The penalty determined by the Tribal Court, which shall be not less than \$100 and no more than \$5,000 for each day that a Trespass occurs or occurred, based on the size, scope, and impact of the Trespass, and whether the Person in Trespass knew or should have known it or its property was or is on Tribal Land; or
 - (iv) Three times the property taxes due for the entire time period of the Trespass based on the tax rates under present Tribal law for any object, structure or chattel on Tribal Land.
- (4) **Other.** Legal and other costs incurred by the Tribe to enforce this Ordinance.
- (5) **No Waiver of Fees, Damages, Penalties, or Annual Compensation.** Tribal consent to a Right-of-Way Agreement shall not waive fees owed for prior unauthorized uses of Tribal Land pursuant to Section 8.809 (b), trespass damages and penalties pursuant to Section 8.811 (e) (3), or just compensation under Section 8.810. The Attorney General may order payments of fees under Section 8.809 (b) and just compensation under Section 8.810, all of which shall be timely paid. If a party receiving such an order fails to make timely payments, the Attorney General, on behalf of the Tribe, may bring an action in Tribal Court, and the Tribal Court shall order the Person that received the order from the Attorney General to:
- (A) make timely payments of fees under Section 8.809 (b) and just compensation under Section 8.810, and
 - (B) pay trespass damages and penalties pursuant to Section 8.811 (e) (3), and

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(C) pay legal costs and fees incurred by the Attorney General to enforce this Ordinance, and

(D) pay interest at a rate of one percent (1%) per month for any amounts not immediately paid when due.

§ 8.812 **ENFORCEMENT**

(a) **Jurisdiction.** The Tribal Court shall have exclusive jurisdiction to enforce actions over any rights, obligations or interests created pursuant to this Ordinance, provided, however, that this Ordinance shall not be deemed a waiver of the Tribe's sovereign immunity from unconsented suit and the Tribe shall not be named a defendant in any action brought under this Ordinance.

(b) **Trespass.** A Person occupying Tribal Land without authorization is subject to immediate removal, ejection and damages and penalties pursuant to Section 8.811 of this Ordinance. The Tribe shall have no liability for loss or damage to personal property.

(1) Any Tribal Law Enforcement Officer at the time the Trespass occurs shall be authorized to issue a citation for Trespass and seize any motorized vehicles, equipment and material goods, used in connection with the Trespass.

(2) The Tribal Chairman may order any Person who owns, operates, licenses, or otherwise benefits from existing facilities on Tribal Land to demonstrate that such facilities are authorized to be on such Tribal Land. The Person shall then have thirty (30) days to demonstrate that all the facilities are properly and currently authorized by the Tribe, and if applicable by the United States, to be on Tribal Lands.

(3) If a Person fails to respond to the Tribal Chairman or if the Person fails to provide evidence demonstrating that all of its facilities are properly and currently authorized within thirty (30) days of being so ordered, the Person shall file an application within fifteen (15) days pursuant to 25 C.F.R. § 169 and Section 8.807 of this Ordinance for all facilities that the Person has not demonstrated are properly and currently authorized to be on Tribal Land.

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- (4) If a Person fails to timely file an application as required by paragraph (b)(3) of this subsection, the Attorney General, on behalf of the Tribe, may bring an action in Tribal Court, and the Tribal Court shall order the Person to:
- (A) immediately and properly file an application under Section 8.807 of this Ordinance and 25 C.F.R. § 169, and
 - (B) pay a penalty of \$100 per day per parcel from the application due date in Section 8.812 (b) (3) until the application is filed, such penalty shall be in addition to any other amounts due, and
 - (C) pay legal costs and fees incurred by the Attorney General to enforce this Ordinance, and
 - (D) pay interest at a rate of one percent (1%) per month for any amounts not immediately paid when incurred under the Tribal Court order.
- (c) **Termination of Occupancy Right.** Upon violation of the terms of any Right-of-Way Agreement, Service Line Agreement, or Tribal Court order under Section 8.811 (e) (5) and the expiration of any cure period, the Tribe may initiate proceedings to terminate the Occupancy Right of the Person in violation by filing a verified complaint, which shall include:
- (1) The name of the Person(s) allegedly in violation and each Person(s) known to be claiming an interest through such Person(s), as a defendant;
 - (2) A concise statement of the facts concerning the alleged default(s) and such other facts as may be necessary to constitute a cause of action;
 - (3) True and correct copies of the document by which the Occupancy Right was conferred, and any related note, mortgage, or other recorded real property security instrument, the operative instrument, and any assignment of any of these documents; and
 - (4) Any applicable allegations concerning compliance with any relevant requirements and conditions prescribed in:

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- (A) Tribal codes, ordinances and regulations;
 - (B) Federal statutes and regulations, and
 - (C) Operative provisions of the document by which the Occupancy Right was conferred.
- (5) A copy of the summons and complaint shall be served on all defendants in accordance with Tribal law.
- (d) The Tribal Court shall hear and decide an action to terminate an Occupancy Right in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the defendants.
- (e) If the plaintiff establishes grounds to terminate the Occupancy Right, the Tribal Court shall enter judgment, which shall include payment by the defendant(s) of the legal costs and fees incurred by the Attorney General associated with the legal proceedings under this Ordinance, and, as appropriate:
- (1) Declaration of the plaintiff's right to recover the premises;
 - (2) Termination of the defendant's Occupancy Right;
 - (3) A writ of restitution directing one or more Tribal Law Enforcement Officers to immediately remove the defendant(s) and all other Persons, and their property, from Tribal Land they have occupied unlawfully or pursuant to the terminated Right-of-Way Agreement or Service Line Agreement; and/or
 - (4) Monetary damages, which may include damages to the Tribal Land, the revenues derived from the unlawful occupancy and liquidated damages of \$1,000 per day.
- (f) **Emergency Expedited Hearing.** In the event the activities, conduct or conditions on Tribal Land pose a threat to the Public Interest, the Tribe or other party with a legal interest in the property may initiate termination proceedings without regard to otherwise applicable procedural requirements. In such event, the Tribal Court shall:

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- (1) expedite legal proceedings to adjudicate termination of the Occupancy Right, and
 - (2) order such interim or permanent relief as may be necessary, including, if warranted, removal of the defendant and/or its property from the premises or immediate cessation of activities, conduct or alleviation of conditions that post a threat to the Public Interest.
- (g) Federal Enforcement. In addition to any Tribal Court enforcement action and remedies described in this Ordinance, the United States may, at its discretion and upon reasonable notice from the Tribe, enforce or cancel any Right-of-Way Agreement or Service Line Agreement pursuant to 25 C.F.R. § 169.

§ 8.813 DISPOSITION OF PROPERTY ON TRIBAL LAND IN VIOLATION OF THIS ORDINANCE

- (a) The Tribe shall have the right to seize, hold and exclude the owner from using property that the Tribe determines has been intentionally placed or left on Tribal Land in violation of this Ordinance.
- (b) At the conclusion of any legal proceedings brought pursuant to this Ordinance, the Tribe shall:
 - (1) return the property to the defendant if ordered to do so by the Tribal Court, or
 - (2) continue to hold and exclude the defendant from possession or use of the property pending payment in full of any damages, penalties, interest, legal costs and other expenses imposed on the defendant by the Tribal Court.
- (c) In the event the defendant fails, within 90 days, to pay in full any damages, penalties, legal costs or other expenses imposed by the Tribal Court, the Tribe at its discretion may:
 - (1) Sell the property and credit the proceeds against the judgment; or
 - (2) Assume ownership of the property and credit its value, as determined by the Tribal Court, against the judgment, provided that if the value of the property exceeds the judgment, the Tribe shall pay the excess to the defendant.

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§ 8.814 TAXES, FEES AND ASSESSMENTS

- (a) Pursuant to RTC § 4.400, the Tribe reserves the right to impose fees, taxes or assessments in connection with an application for Right-of-Way Agreement or in connection with the use of a Right-of-Way pursuant to a Right-of-Way Agreement. The Tribe may also agree in a particular Right-of-Way Agreement to waive such taxes, fees and assessments.
- (b) No tax, assessment, fee or charge of any kind imposed by the State of California or any subdivision of the State of California shall apply to goods or services provided or present on the Reservation pursuant to an authorized Right-of-Way granted under this Ordinance.

§ 8.815 SEVERABILITY

If any provision of this Ordinance shall be held unconstitutional or invalid by the Tribal Court, only the invalid provision or language shall be severed from the Ordinance and the remaining provision and language of this Ordinance shall remain in full force and effect.